SUPREME COURT, U.S.

FILED

No. 532

United States Court of Appeals

for the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

vs.

THOMAS CATENA,

Appellee.

Appeal from the United States District Court for the Southern District of California, Central Division

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Brief of Appellant

Appeal from Judgment of Dismissal

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(A)

Docket Entries

Criminal Docket 44070

THE UNITED STATES

vs.

CHARLES CAMPISI, THOMAS CAMPISI, FRANK GIAMPAOLI, UGO GIAMPAOLI and ANIELLO SANTAGATA

ATTORNEYS:

For U. S.:
LEONARD P. MOORE
U. S. Atty.

For Defendant:

F. Giampaoli
ARTHUR R. MARTOCCIA
149 Broadway N. Y. C.

Ugo Giampaoli
ROBERT DEPOTO
25 Broad St. N. Y.

Santagata
JOSEPH F. CLEMENTS
51 Chambers St. N. Y. C.

Thomas Campisi
ABRAHAM H. BRODSKY
111 Broadway N. Y. C.

Docket Entries

DATE	PROCEEDINGS
1955	
Aug. 11	Indictment Filed
Aug. 11	Petition for writ of habeas corpus for deft Ugo Giampaoli filed. Writ issued.
Aug. 11	Petition for writ of habeas corpus for deft Santagata filed. Writ issued
Aug. 12	Notice of Appearance Filed (F. Giampaoli
Aug. 12	Notice of Appearance Filed (U. Giampaoli)
Aug. 12	Notice of Appearance Filed (Santagata)
Aug. 12	Writ of Habeas Corpus Retd & Filed Executed. (Santagata)
Aug. 12	Writ of Habeas Corpus Retd & Filed Executed. (Ugo Giampaoli)
Aug. 12 (B)	Before Bruchhauser J. Defts Frank Giampaoli, Ugo Giampaoli, & Santagata arraigned and a plea of Not Guilty is entered for said Defts. Bail of $10,000.00 is fixed for Deft Frank Giampaoli and $50,000.00 is fixed for each of Defts Ugo Giampaoli and Santagata. Case adjd to Aug 17/55. Defts Charles & Thomas Campisi Not Present. Bench Warrants Ordered
Aug. 12	Bench Warrants Issued for Defts Thomas & Charles Campisi.
Aug. 16	Court bond of Deft Frank Giampaoli filed. $10,000.00 App. 8/12/55 Manuf. Cas. Ins. Co. (Bond #43780)
Aug. 17	Before Abruzzo J. Defts Frank & Ugo Giampaoli and Santagata present. Case adjd to Sept 6, 1955

Docket Entries

DATE	PROCEEDINGS
1955	
Sept. 6	Before Rayfiel J. Case adj'd to Sept 21, 1955
Sept. 21	Before Byers J. Defts Frank and Ugo Giampaoli present. Deft Aniello Santagata not present. Case adjd to Oct 3, 1955
Sept. 21	Commissioners papers filed.
Oct. 3	Before Rayfiel J. Case adjd to Nov. 7, 1955
Oct. 11	Motion to advance this case for immediate trial (re Deft Aniello Santagata) filed. Retble Oct 17, 1955.
Oct. 17	Before Rayfiel J. Hearing on motion to advance this case for immediate trial etc. Motion argued & denied.
Oct. 17	Affidavit in opposition to motion filed
Nov. 7	Before Bruchhausen J. Case called. Marked ready (F. & U. Giampaoli & Santagata)
Nov. 14	Before Bruchhausen J. Case marked ready & passed (F. & U. Giampaoli & Santagata)
Nov. 15	Before Bruchhausen J. Case adjd. to Nov. 21, 1955.
Nov. 17	Petitions for writs of habeas corpus ad prosequendum for defts Santagata & Ugo Giampaoli filed. Writs issued.
Nov. 21	Before Bruchhausen J. Defts Ugo Giampaoli & Santagata and counsels present. Deft Santagata having been warned of his rights through his counsel who acted as interpretor, withdraws plea of not guilty and enters a plea of guilty to counts 1-3 and 4 on his own behalf. Sentence adjd to Dec. 8, 1955. Case as to Frank Giampaoli and Ugo Giampaoli adjd to Nov. 28, 1955

Docket Entries

DATE	PROCEEDINGS
1955	
Nov. 21	(2) Writs retd & filed. Executed. Defts Ugo Giampaoli and Aniello Santagata produced before the Court, this date
Nov. 28	Before Bruchhausen J. Deft Ugo Giampaoli and Counsel present. Deft having been warned of his rights, withdraws plea of Not Guilty and enters a plea of Guilty to Counts 1 & 4 on his own behalf. Sentence adj'd to 12/15/55 Case as to Frank Giampaoli adj'd to Dec 5, 1955
Dec. 5	Before Inch J. Case as to Frank Giampaoli adj'd to Jan 3, 1956
(C) Dec. 8	Before Bruchhausen J. Case called Sentence as to Deft Santagata adj'd to Dec 15, 1955.
Dec. 15	Before Bruchhausen J. Deft Ugo Giampaoli and Counsel present. Deft, sentenced to be imprisoned for a period of 4 years on each of counts one and four and fined the sum of $500.00 on each of Counts one and four amounting in all to the sum of $1000.00 and Deft to stand committed until said fines be paid or otherwise discharged according to law. Sentence of imprisonment to run Concurrently. On Motion of Asst U. S. Atty Windels Counts 2 & 3 are dismissed.
Dec. 15	Judgment & Commitment Filed Cert Copies Delv'd to Marshal (U. Giampaoli)
Dec. 15	Before Bruchhausen J. Deft Santagata and Counsel present. Deft Santagata Sentenced to be imprisoned for a period of 4 years on each of Counts 1, 3 & 4 and fine the sum of $500.00

Docket Entries

DATE	PROCEEDINGS
1955	
	on each of Counts 1, 3 & 4 amounting in all to $1500.00 and to stand committed until said fines be paid or otherwise discharged according to Law. Said sentences of imprisonment to run concurrently.
Dec. 15	Judgment & Commitment Filed. Cert Copies Delv'd to Marshal.
Dec. 27	Writ retd & filed. Executed. Return of U. S. Marshal, Dist of N. J. thereon. Ugo Giampaoli is in his custody.
1956	
Jan. 3	Before Abruzzo J. Case adjd to Feb. 6, 1956 (Frank Giampaoli)
Jan. 6	Certified copy of Commitment as to Aniello Santagata retd & filed. Executed. Deft Santagata delvd to Milan.
Jan. 24	Letter from Asst U. S. Attorney Windels, dated Jan. 24, 1956 advising Clerk that bail of Deft Frank Giampaoli had been reduced to "own recognizance" after a hearing in Judge Bruchhausen's chambers this date, filed.
Jan. 24	Court bond of Deft Frank Giampaoli filed. (Bond #44023 own recognizance, approved 1/24/56—Comm. Fay.)
Feb. 1	Warrant retd & filed. Executed. Deft Thomas Campisi arrested by U. S. Marshal in District of N. J.
Feb. 6	Before Byers J. Case marked off as to Giampaoli

Docket Entries

DATE	PROCEEDINGS
1956	
Feb. 21	Stenographers minutes of plea Ugo Giampaoli filed
Mar. 30	Appearance bond for $25,000.00 for Deft Thomas Campisi ordered given before Judge Hartshorne, in District of New Jersey, received from Clerk, U. S. District Court, Newark N. J. and filed. (Bond #44137 The Summit Fidelity & Surety Co.)
(D)	
Apr. 9	Before Rayfiel J. Deft Thomas Campisi arraigned plea of not guilty entered, by the Court. Bail fixed at $25,000.00. Case adjd to May 7, 1956
Apr. 10	Court bond of Thomas Campisi filed $25,000.00 App. 4/9/56 #44154 The Summit Fid. & Surety Co.
Apr. 24	Certified copy of Judgment & Commitment of Ugo Giampaoli retd & filed. Executed
May 7	Notice of Appearance for Deft Thomas Campisi filed
May 7	Before Bruchhausen J. Case as to Thomas Campisi adjd to June 4, 1956
May 10	Commissioners papers dated 8/2/55 filed.
June 4	Before Inch J. Case as to Campisi adjd. to June 13–1956
June 13	Before Inch Ch. J. Case as to Thomas Campisi adjd to June 25–1956
June 25	Before Inch Ch. J. Case adj to July 2–56

Docket Entries

DATE	PROCEEDINGS
1956	
July 2	Before Byers J. Case adj to 7-9-56
July 9	Before Byers J. Case adj to 7-16-56
July 16	Before Abruzzo J. Case as to Thomas Campisi adjd to Sept 5, 1956
Sept. 5	Before Bruchhausen J. Case as to Thomas Campisi adjd to 10-1-56
Oct. 1	Before Bruchhausen J. Case as to Thomas Campisi adjd to Oct 26, 1956
Oct. 24	Before Bruchhausen J. Case as to Thomas Campisi adjd to Oct 25, 1956
Oct. 25	Before Bruchhausen J. Deft Thomas Campisi present
Oct. 25	Trial ordered. Trial adjd to Oct. 26, 1956.
Oct. 26	Before Bruchhausen J. Trial resumed. Trial adjourned to Oct. 29, 1956.
Oct. 29	Before Bruchhausen J. Trial resumed. Trial adjourned to Oct. 30, 1956.
Oct. 30	Before Bruchhausen J. Trial resumed and concluded. Jury render a verdict of guilty as to the deft Thomas Campisi as charged on Counts 1 and 3. Motion made to set aside the verdict and denied. Sentence adj to Nov. 16, 56 Deft remanded Order of sustenance filed
Nov. 16	Bruchhausen J. Deft Thomas Campisi and counsel present Deft sentenced to be imprisoned for 5 years and to pay a fine of $1000. on Count one and to be imprisoned for 3 years and to pay a fine of $1000. on Count three and to stand com-

Docket Entries

DATE	PROCEEDINGS
1956	
	mitted until said fines be paid or he be discharged as provided by law and sentences of imprisonment are to run consecutively
	Judgment & Commitment filed Copies deld to Marshal
Nov. 23	Reporters minutes of sentence filed
Nov. 23	Notice of Appeal filed re Thomas Campisi
(E)	
Nov. 23	Copy of Notice of Appeal and Form #54 mailed to the Clerk, U. S. Court of Appeals.
Nov. 23	Notice of taking Appeal mailed to U. S. Marshal E. D. N. Y. & Warden Det. Hqrs.
Nov. 28	Election against service of Sentence filed. (Re Thomas Campisi)
Dec. 6	Notice of Motion for an order admitting Deft (Thomas Campisi) to bail filed Dec. 10, 1956
Dec. 10	Before Byers J. Notice of Motion for an order admitting Deft (Thomas Campisi) to bail. Referred to Judge Bruchhausen.
Dec. 12	Before Bruchhausen J. Hearing on motion for an order admitting Deft. Thomas Campisi to bail. Motion argued & submitted. Decision reserved.
Dec. 12	Affidavit of Thomas Campisi filed
Dec. 12	Affidavit in opposition of Jos. F. Soviero filed.
1957	
Jan. 10	By Bruchhausen J. Decision on Motion admitting T. Campisi to bail pending appeal. Motion denied see memorandum.
Jan. 16	Transcript of stenographers minutes filed

Indictment

(313) UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Cr. No. 44070

(18, U. S. C. Secs. 2 and 371)

(26, U. S. C. Secs. 4705(a) and 7237)

[SAME TITLE]

THE GRAND JURY CHARGES:

COUNT ONE

From on or about and between the 1st day of January, 1955 and the 3rd day of August, 1955, within the Eastern District of New York, the above-named defendants, Charles Campisi, Thomas Campisi, Frank Giampaoli, Ugo Giampaoli and Aniello Santagata did unlawfully, wilfully, knowingly and feloniously conspire, confederate, plan and agree together and with other persons unknown to the Grand Jury to commit offenses against the United States, to wit: to import heroin into the United States contrary to law and knowingly to receive and conceal heroin so imported, in violation of Title 21, U. S. C. Section 174, and to sell heroin without written orders duly required by law, in violation of Title 26, U. S. C. Section 4705(a). (Title 18, United States Code, Section 371.)

In pursuance of said unlawful conspiracy and for the purpose of effecting the objects thereof, the following OVERT ACTS were committed:

Indictment

1. On or about the 18th day of April, 1955, in the vicinity of the Bella Roma Restaurant at 52 Alden Square, Hempstead, Long Island, New York, the defendant, Ugo Giampaoli, delivered approximately 14½ grains of heroin to Anthony Zirilli.

(314) 2. On or about the 20th day of April, 1955, the defendants, Ugo Giampaoli, Aniello Santagata, Charles Campisi and Thomas Campisi met in the vicinity of 458 South 11th Street, Newark, New Jersey.

3. On or about the 20th day of April, 1955, in the vicinity of 143-43 Springfield Boulevard, Springfield Gardens, Long Island, New York, the defendants, Charles Campisi, Thomas Campisi, Ugo Giampaoli and Aniello Santagata, sold approximately 8 ounces and 160 grains of heroin to Anthony Zirilli.

4. On or about the 19th day of May, 1955, in the vicinity of the parking lot adjacent to the Mona Lisa Bridal Shop, 425 Flatbush Avenue Extension, Brooklyn, New York, the defendant, Aniello Santagata, concealed 8 ounces and 234 grains of heroin in a brown paper package located in the glove compartment of his automobile, a 1953 Lincoln Capri Sedan, New Jersey license number P/G 11 N.

5. On or about the 19th day of May, 1955, in the vicinity of the Mona Lisa Bridal Shop, 425 Flatbush Avenue Extension, Brooklyn, New York, the defendants Ugo Giampaoli and Aniello Santagata sold approximately 8 ounces and 234 grains of heroin to Anthony Zirilli.

6. On or about the 29th day of June, 1955, in the vicinity of Anthony's Restaurant, 54th Street and Lexington Avenue, New York, N. Y., the defendants, Ugo Giampaoli and

Frank Giampaoli discussed the sale of heroin to be made to Joseph Tremoglie.

7. On or about the 29th day of June, 1955, the defendant, Frank Giampaoli drove the defendant, Ugo Giampaoli, to 143-43 Springfield Boulevard, Springfield Gardens, Long Island, N. Y. where they met with the defendant Aniello Santagata and discussed the sale of heroin to be made to Joseph Tremoglie.

8. On or about the 29th day of June, 1955, the defendants, Aniello Santagata, Thomas Campisi and Charles Campisi, met in the vicinity of North 6th Street and Bloomfield Avenue, Newark, New Jersey.

(315) 9. On or about the 29th day of June, 1955, in the vicinity of North 6th Street and Bloomfield Avenue, Newark, N. J., the defendant Aniello Santagata and Ugo Giampaoli sold approximately 8 ounces and 300 grains of heroin to Joseph Tremoglie.

10. On or about the 19th day of July, 1955, in the vicinity of 558 N. 6th Street, Newark, New Jersey, the defendant, Thomas Campisi concealed approximately 8 ounces and 328 grains of heroin in a brown paper package located under the cushion of an upholstered chair.

11. On or about the 19th day of July, in the vicinity of 558 N. 6th Street, Newark, New Jersey, the defendants, Thomas Campisi and Ugo Giampaoli, sold approximately 8 ounces and 328 grains of heroin to Joseph Tremoglie.

* * * * * *

COUNT THREE

That on or about the 20th day of April, 1955, within the Eastern District of New York and in the vicinity of 143-43 Springfield Boulevard, Springfield Gardens, Long Island, N. Y., the defendants Charles Campisi, Thomas Campisi, Ugo Giampaoli and Aniello Santagata, did sell approximately 8 ounces and 160 grains of heroin to Anthony Zirilli for the sum of Twenty Three Hundred Dollars ($2,300.00), without a written order form duly required by law. (Title 26, United States Code, Sections 4705(a) and 7237; Title 18, United States Code, Section 2)

• • • • •

(316) A TRUE BILL

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Foreman.

/s/ Leonard P. Moore /PWN
Leonard P. Moore, United States Attorney.

Extracts from Testimony

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Cr. 44070

[SAME TITLE]

Brooklyn, New York,
October 26, 1956

Before:

HONORABLE WALTER BRUCHHAUSEN, *U.S.D.J.*,
and a Jury.

Appearances:

LEONARD P. MOORE,
United States Attorney for the
Eastern District of New York,
By: JOSEPH SOVIERO,
Assistant United States Attorney.

ABRAHAM BRODSKY, Esq.,
Attorney for Defendant.

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(3) ANTHONY ZIRILLI, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Soviero:

• • • • •

(24) Q. Did you have a conversation with Santagata with respect to a man by the name of Compy?

Mr. Brodsky: If your Honor please, I respectfully object again. I move for the withdrawal of a juror and the declaration of a mistrial.

The Court: What is the name of this man?

Mr. Soviero: This man's name is Campisi. Counsel objects—

The Court: Are you objecting to leading?

Mr. Brodsky: I am objecting to leading and suggesting and I submit that it is highly prejudicial and (25) again I ask for the withdrawal of a juror and the declaration of a mistrial.

The Court: Overruled.

Mr. Brodsky: I respectfully except.

Q. Now, did you have a conversation with Santagata about a man named Compy? A. Yes. During this conversation with Santagata I told him that I had read in the newspaper about a man named Compy who had been murdered in Newark. He said that he knew the man. He knew the whole family, that in fact the name of the man was Campisi and that they were the people we were doing business with in Newark.

Mr. Brodsky: Now, if your Honor please, I ask for the withdrawal of a juror and a declaration of a mistrial. This is highly inflammatory and highly prejudicial.

The Court: Overruled.

Mr. Brodsky: I respectfully except.

A. Santagata continued to say that he could not get pure heroin from these people because they were four brothers and they had many mouths to feed and he said we can't blame them for adulterating the heroin because there are so many mouths to feed and so much money to be paid out.

Then we continued our conversation about Mexico and (26) I told Santagata that when I was ready to go I would let him know and soon thereafter I parted.

* * * * *

(91) JOSEPH TREMOGLIE, a witness called in behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Soviero:

Q. Mr. Tremoglie, will you please tell us your present occupation? A. Narcotic agent for the Federal Bureau of Narcotics.

Q. Where are you presently stationed? A. Chicago.

(92) Q. When did you get into New York? A. This morning.

Q. When was the first time you met me, Agent Tremoglie? A. This morning.

Q. About what time? A. Well—

Mr. Brodsky: I object to what time he met him.

The Court: Overruled.

Q. About what time? A. Oh, about—I guess it was high noon, when I actually met you, sir.

Q. Now, Agent Tremoglie, in the latter part of June, 1955, did you meet an individual or individuals by the name of Ugo Giampaoli and Aniello Santagata?

Mr. Brodsky: If your Honor pleases, may I again ask your Honor to direct the district attorney to refrain from leading and suggesting the answers to the witness.

The Court: Yes.

Q. Did you at any time prior to today meet two indi-

viduals by the name of Ugo Giampaoli and Aniello Santagata? A. Yes, sir, I did.

Q. Will you tell us the date or the time of the month and the year that you met them? A. The latter part of June, 1955.

Mr. Brodsky: Met whom? When?

Q. And whom did you meet in the latter part of June in (93) 1955? A. The latter part of June in 1955 I met Ugo Giampaoli and Aniello Santagata.

Q. And will you tell us how you met them? A. I was introduced to them by Narcotics Agent Zirilli.

Q. Where did this introduction take place? A. At Ugo Giampaoli's home.

Q. And did you enter into some conversation with them at that time? A. Yes, sir, I did.

Q. And was there a conversation between them and Agent Zirilli?

Mr. Brodsky: If your Honor pleases, again may I ask—it is a very simple thing to ask what happened there, instead of talking of—

The Court: You are making an objection on the ground it is leading? Let's not have a long—

Mr. Soviero: I will withdraw the question.

Mr. Brodsky: May I further object to any discussion with them. If there is any discussion, let him name the persons with whom the discussion was had.

Q. Did you enter into some discussions there? A. Yes, sir, I did.

The Court: Who was present at this occasion? Who were there in the group?

The Witness: Agent Zirilli, Aniello Santagata (94) and Ugo Giampaoli.

Q. Tell us about these conversations, relate the conversations that you had with them to me this morning.

Mr. Brodsky: What?

Mr. Soviero: Relate the conversations, I said.

Mr. Brodsky: I didn't get the question. May I have it?

(The court reporter thereupon read back the last question.)

Mr. Soviero: I will withdraw the question.

The Court: It may be a little complicated. Mr. Brodsky thought you said—

Mr. Soviero: What I am asking him to do is to relate now to me—

The Court: I know what you meant.

State the conversations that were had at that time with the persons you have named.

The Witness: The conversation that went on in the presence, in the presence of Narcotic Agent Zirilli, Ugo Giampaoli and Aniello Santagata and myself was to do with narcotics.

Mr. Brodsky: I object to what it was to do with.

Q. Tell us what you said and—

The Court: Tell us as best as you can recall what (95) was said.

The Witness: Agent Zirilli was planning a trip to Mexico.

Mr. Brodsky: I object to that.

The Court: That is what he stated?

The Witness: Yes, sir.

Mr. Brodsky: I object upon the further ground that this conversation is in no wise binding upon the defendant Campisi.

The Court: Overruled.

Q. Now, will you tell us exactly what was said by the parties, to the best of your recollection? A. The forthcoming trip to Mexico for the purpose of purchasing narcotics in huge quantities and to be smuggled into the United States and sold in the United States here for the purpose of making a lot of money.

Q. Who was to go to Mexico? A. The trip was to be taken by Agent Zirilli and Aniello Santagata.

Q. Was there some conversation about what you were to do while those two were in Mexico? A. The purpose for me being there was that I was to take care of Agent Zirilli's business.

Mr. Brodsky: I object to the purpose.

Q. Tell us the conversation. Tell us what they said (96) and what you said. A. Agent Zirilli explained to Giampaoli and Santagata that I was his brother-in-law. I was introduced to them as such and I am to take care of his business, his narcotics business while he was on the trip to Mexico with Santagata.

Q. Now, did there come a time when you took a trip to Jersey? A. Yes, sir.

Q. And about what time was that that you took the trip to New Jersey? A. About seven o'clock in the evening.

Q. Of what day? A. Of June the 29th of 1955.

Q. And whom did you go to Jersey with? A. I went together with Aniello Santagata and Ugo Giampaoli in Santagata's car.

Q. And where did you proceed to in New Jersey? A. We proceeded toward Newark.

Q. And did you enter Newark? A. Yes, sir, before—

Q. And did you stop somewhere in Newark? A. Yes, sir. We stopped in the vicinity of First Avenue and North 6th Street.

Mr. Brodsky: I object to the vicinity, if your Honor pleases.

The Court: Overruled.

Q. Did you stop near that intersection of First Avenue (97) and North 6th Street? A. Well, there is a water tower that is placed right in the small square there and there are—if I recall correctly, there are three streets that intersect: there is Bloomfield Avenue, North 6th and First Avenue. We were parked about forty feet from the corner of Bloomfield Avenue in First Avenue.

Q. Now, prior to making this trip to New Jersey was there a meeting between anybody? A. No, sir. There weren't any meetings other than Santagata, Giampaoli, myself and Zirilli.

Q. There was a meeting between you and Santagata, Giampaoli and Zirilli, is that right? A. Yes, sir.

Q. When did that meeting take place, the last meeting before you proceeded to New Jersey? A. That took place in the afternoon of the same day in Giampaoli's home.

Q. And at that time what took place at that meeting? A. At that time Agent Zirilli instructed me to go along—

Mr. Brodsky: I object to what Agent Zirilli instructed him.

Q. Was there a conversation? A. Yes, sir.

Q. And was it made in the presence of Giampaoli and (98) Santagata? A. Yes, sir.

Q. Will you tell us what he said to you?

Mr. Brodsky: I object to that, if your Honor pleases.

The Court: Overruled.

A. Zirilli told me to go along with Santagata for the purpose of purchasing a quarter kilogram of heroin.

Q. Did he give you any money? A. Yes, sir. He gave me $2500 of official advance funds.

Q. Did you have this money with you when you stopped near this intersection of Bloomfield, Bergen and North 6th Street? A. That was Bloomfield and First Avenue.

Q. Bloomfield and First Avenue, did you have this money with you then? A. Yes, sir, I did.

Q. What did you do with the money then? A. I gave it to Aniello Santagata.

Q. And after you had stopped, what happened with respect to the three of you? Did somebody leave the car or did you all stay in the car?

Mr. Brodsky: If your Honor pleases, if Mr. Soviero wants to testify, I submit that he be sworn.

The Court: All right. I don't want any comments. If you object on the ground that it is leading—

(99) Mr. Brodsky: I do object.

The Court: Just make the legal objection that it is leading and I will understand what your point is.

Mr. Soviero: I will withdraw the question, if it please the Court.

Q. What happened after you stopped near the intersection of First Avenue or North 6th or wherever it was

in New Jersey? A. Aniello Santagata asked me for the money. I gave him the money and he left the car and about ten feet behind the car was standing a group of three men. He approached one of the group and together they walked toward 6th Street.

He returned in just a few minutes, got into the car and drove the car around into Bloomfield Avenue, headed toward Newark and parked in the 300 block of Bloomfield Avenue. He once left the car and before leaving he told me, "Wait here. I will be back shortly."

About five minutes he returned carrying a package wrapped in a newspaper. When he reached the car he tossed the package that he was holding through the front left window which was open, and it landed in the rear seat beside me.

He got into the car and drove away. He brought Giampaoli and myself to the Harrison station of the Hudson (100) Tubes where he left us, telling us that he wanted to meet Agent Zirilli at Ugo Giampaoli's house the following day at one o'clock.

Q. Where did you go then? A. He asked me to be present there also. After getting out of the car we took the Tubes and went back to Manhattan. We went to the restaurant known as Anthony's Restaurant, 627 Lexington Avenue, New York City, where we met Agent Zirilli.

I told Agent Zirilli what had transpired and I left Agent Zirilli and Giampaoli at the restaurant. I returned to meet the covering agents and we returned to the district office where we initialed the evidence and put it in a lock safe cabinet for security until the following day.

Q. I show you this envelope, marked Government's Exhibit 4, and ask you if you have ever seen that envelope before. A. Yes, sir, this is my handwriting and this is the lock sealed envelope that the original package was put into.

Q. What did you do—did you take—withdrawn.

What did you do with it after you placed that substance in the envelope? A. Sealed it and placed it in a lock safe envelope in the office.

(101) The Court: Did you weigh it?

The Witness: No, sir, that was weighed the next day.

Q. Did you weigh it? A. That was weighed the next day.

Q. Did you weigh it? A. Yes, sir, gave it a field test.

Q. And you gave it a field test? A. Yes, sir, and it had a positive reaction. For any opium derivative—

The Court: That's what you found?

The Witness: Yes.

Q. And can you tell us the weight of the contents that you placed in here? A. It was approximately a quarter of a kilo which is about eight ounces.

Q. Now, all of this took place on June 29th, is that correct? A. Yes, sir.

Q. And I believe you told us just a couple of seconds ago that Aniello Santagata told you that he wanted to meet Tony, meaning Agent Zirilli, at the home of Giampaoli the following day, is that correct? A. That is correct.

Q. And were you present at that meeting? A. Yes, sir, I was.

(102) Q. And will you tell us what happened at that meeting? A. Agent Zirilli told Santagata that he was very unhappy and dissatisfied the way he handled the purchase of the quarter kilo the night before. The plan was that I was to meet the source of supply.

Mr. Brodsky: I object to all of this.
The Court: Is this a conversation?
The Witness: Yes, sir.
The Court: With whom? Who was present?
The Witness: Ugo Giampaoli, Agent Zirilli and myself and Aniello Santagata.
The Court: Overruled.

Q. I believe you were saying the plan was— A. The plan was that I was to meet the source of supply from which Santagata was obtaining the narcotics. Since that wasn't done the night before when I made the purchase from Santagata, and after explaining to Agent Zirilli that night, the next afternoon when met again at Ugo Giampaoli's home, Agent Zirilli told Santagata that he was very displeased and dissatisfied in the matter and in the manner that he handled the transaction the night before.

Santagata was a bit angry too because he felt that he wasn't to introduce—

Mr. Brodsky: I object.
(103) Mr. Soviero: I move that it be stricken.
The Court: What did you say?
The Witness: Well—

Q. Don't tell us how he felt. A. Santagata said "I wasn't going to bring you to my source of supply nor bring anybody else."

Q. Following that meeting, did you have another meeting with Giampaoli? A. Yes, sir, I did.

Q. And what date did that meeting take place? A. July 19th of 1955.

Q. Where did that meeting take place? A. That meeting took place in Giampaoli's home.

Q. And will you tell us what occurred there and then?

The Court: Who was present there?

A. Present at that meeting was Ugo Giampaoli, Special employee and myself.

Q. Now, when you say the special employee, will you tell us whom you are referring to? A. I knew him by the name of Al.

Q. Did you know his last name? A. Not his last name, no. I have known him as Al but I heard he was known as Al Rick, but I called him Al.

Q. And the three of you were present, is that right? A. Yes, sir.

(104) Q. Will you tell us what happened? A. After we entered Giampaoli's home, Giampaoli wanted to know if I was ready to purchase narcotics. I told him I was ready for another quarter kilo. He said, all right. I will make the call.

So he left the kitchen in which we were sitting and went to another room of the home, came back in in a few minutes and told us, "I got an appointment for eight o'clock."

From the time that we went there until eight o'clock we sat around and had general conversations, the three of us.

About 6:30 we entered special employee Al's car together with Giampaoli and myself and we went toward Newark, New Jersey.

We arrived in Newark, parking the car at the corner of the intersection of 6th Street and First Avenue. At this point Giampaoli asked me for the money. I said, "Ugo, I am not giving you any money. We discussed that yesterday, that if this deal doesn't go down the way Agent Zirilli, my brother-in-law wanted it to go down, we do no business."

We had a few differences, and finally Giampaoli agreed

to take me along. We walked from that point where the car was parked to a house located at 558 North 6th Street. As we approached the steps there was a woman and a man sitting (105) on the first landing of about five steps, the top of five steps.

Q. Is that man seated in the courtroom? A. Yes, sir.

Q. Will you point him out, please? A. He is seated there (indicating) at the defense counsel table.

Q. Tell us which man. A. The man seated there with his both hands folded on the desk.

Q. The man— A. The man in the brown suit.

Mr. Soviero: Will the record indicate that he identified the defendant, Thomas Campisi.

Q. Will you tell us what happened then? A. As this man saw us approaching, he beckoned us to come on in. Giampaoli and I followed him into the house. We entered the living room of the house.

Giampaoli introduced me to this man as Peppe, and he introduced this man to me as Tommy. I told Tommy, I said, "Tommy, I am not dickering about price for the stuff. All I want is somebody to hold responsible if the stuff ain't no good."

I said, "You don't blame me for that." Tommy agreed and said, "No, I don't blame you."

I answered him, "You know, I can't go over and bother Giampaoli if the stuff isn't any good." I said, "Now, is (106) this stuff as good as the stuff I bought last time when I came up with the old man with the gray hair, Ugo's friend?"

He said, "Yes, the same thing. I had a piece and I broke it in four and this is one of the other four pieces."

I said, "How good is it?" He said, "It breaks 87."

Q. What does that mean, breaks 87? A. That's jargon

used in the business indicating the strength and percentage.

Q. Does that mean that it is 87 per cent pure? A. Yes, sir. I replied, "Breaks 87? My chemist told me the other stuff I got was only 65."

He said, "Oh, he is full of bologna." I said, "Well, that's what he told me. If this stuff is as good as you say it is, I stand to make more money."

He said, "Yes, do this, get an ounce and break it six times and give it to your pusher. If he comes back and complains, get an ounce and break it four times and you will have good stuff, about 50 per cent."

He said, "That will be good for you." I said, "Well, I stand to make a lot of money if it was going to work out that way."

After finishing that conversation, I turned to Ugo and I said, "Here is the money, Ugo." I counted out $2500 (107) official advance funds and handed it to Ugo. I said, "You count it out again." He re-counted it. He was satisfied and Ugo and Tommy left the living room and went into the kitchen.

I couldn't overhear any conversation, they had the swinging door closed. They came back out in a couple of minutes, Tommy walked over to an upholstered chair, a single seat chair that was placed in the corner of the living room, lifted the seat cushion and withdrew a package wrapped in brown paper. Before handing it to me, he told me, "Now, you go out and drive the car around the block and Ugo will meet you outside."

I said, "I am not worried about carrying any stuff here, nobody knows me." He said, "It looks funny for two guys to walk out of the house. If you are not worried, all right."

He said, "Put it in your pocket," and he showed me by placing it in his pocket, his trouser pocket. He with-

draw the package from his pocket and handed it to me and I placed it in my trouser pocket and before leaving, I said, "Tommy, if this stuff is as good as you say, I stand to make a good piece of change and I will be back for more."

With that we shook hands and he said so long. As I walked out of the house and got to the pavement in front of (108) the house, I gave the prearranged signal to the covering agents indicating that the purchase was consummated. We proceeded, Giampaoli and myself proceeded toward the car w[illegible]re the special employee was waiting.

We got into the car and went back to Manhattan.

Q. And did you have this purchase with you at that time? A. Yes, sir.

Q. What did you do with it? A. I left Giampaoli and the special employee in the restaurant after we had something to eat and I told Ugo that I had to deliver this to my customer. I left the restaurant and met the covering agents a block away from the restaurant; together we went to the district office where the package was initialed for future evidence, for future identification.

It was field tested. It showed a positive reaction and it was placed in a lock sealed envelope and put in a lock sealed cabinet for safekeeping.

The Court: Did you weigh it?

The Witness: To my best recollection, I don't think we weighed it that night.

The Court: What did the field test show?

The Witness: Positive reaction. There was a derivative of opium.

(109) Q. I show you this shopping bag and this black oil cloth bag and I ask you if you have ever seen them before. A. Yes, sir. This oilskin bag, my initials ap-

pear on it, on the adhesive tape at the top of the package, and the date at the time when the initials were placed on there. This brown bag also bears my initials and the date they were placed on it.

Q. Will you tell us the circumstances or where you say you saw that bag before? A. This bag was the bag that Tommy gave me when he was in the living room of his home, the package that he took out from under the seat cushion of the upholstered chair.

Q. You say, Tommy. You mean the defendant Thomas Campisi? A. Yes, sir.

Mr. Soviero: I offer these in evidence, if it please the Court.

The Clerk: Exhibit 8.

(The above referred to packages were marked Government's Exhibit 8 in evidence.)

Mr. Soviero: With your Honor's permission, I would like to exhibit this to the jury.

You may inquire.

(110) *Cross Examination by Mr. Brodsky:*

Q. Mr. Tremoglie, is that the way you pronounce your name? A. Tremoglie.

Q. T-r-e-m-o-g-l-i-e? A. That is correct.

Q. How long have you been a narcotic agent? A. Three years, sir.

Q. So that in June of 1955 you were an agent about a year and a half, is that right? A. Approximately. Roughly, yes, sir.

Q. And before that, sir, what did you do? A. I was an insurance salesman.

Q. What? A. An insurance salesman.

Q. For whom? A. For Metropolitan.

Q. How long were you an insurance salesman? A. Six years.

Q. And before that, what did you do? A. I was in the Service, sir.

Q. And before you were in the Service, what did you do? A. I went to school.

Q. What school did you go to? A. I went to high school, grammar, elementary, high school.

Q. Never went to college? A. No, sir. I went to business college, if that means anything.

Q. What business college? A. Strayers.

(111) Q. Where are they located? A. They are in Jersey, south Jersey.

Q. Now, you are now assigned to Chicago? A. Yes, sir.

Q. Are you still with the Narcotics Bureau? A. Yes, sir, I am.

Q. And when were you transferred to Chicago? A. Oh, approximately a year ago.

Q. About what date? A. If you want the exact date, I will have to think of it.

Q. Well, think. A. July of 1955.

Q. July? A. Of 1955.

Q. Of 1955? A. Or August of 1955, I beg your pardon. To be exact, it was the latter part of August.

Q. Well, you say you were in Campisi's home and purchased this narcotics on July 19th? A. Yes, sir, I was.

Q. And with reference to that date, thereafter when were you transferred to Chicago? A. The latter part of August.

Q. Now, where for the first time did you meet Giampaoli? A. I met him at his home.

Q. That was for the first time? A. Yes, sir.

Q. Right? A. That is right.

Q. And you met him on what date? A. On June 29th.

(112) Q. And until that time, you had never seen him, is that correct? A. No, I hadn't.

Q. You were introduced to Giampaoli? A. Yes, sir, I was.

Q. And you say Santagata was with him there? A. Yes, sir.

Q. At that time? A. Yes, sir.

Q. How were you introduced to him? A. I was introduced to him as Agent Zirilli's brother-in-law.

Q. You weren't introduced as Agent Zrilli's brother-in-law, were you? How were you introduced? A. I was introduced by Tony's brother-in-law.

Q. By what name were you introduced? A. Peppe.

Q. And Peppe is the Italian for Joseph? A. That is correct, sir.

Q. Now, on June 29th you went to Jersey, is that correct? A. Yes, sir, I did.

Q. And you had with you at that time $2500 which Zirilli had given you, right? A. Yes, sir.

Q. And that was for the purchase of narcotics, is that correct, sir? A. Yes, sir.

Q. Had the serial numbers of that money been recorded, (113) sir? A. Yes, sir.

Q. Who had recorded the serial numbers of that money? A. I don't know, sir, who did.

Q. What? A. I don't know who did.

Q. In what denominations was the money? A. To the best of my recollection they were fifties.

Q. Fifties? A. And hundreds.

Q. Fifties and hundred. And when you left to go to Jersey, where did you leave from? A. I left from Ugo Giampaoli's home.

Q. And were there covering agents in the vicinity at the time you left Giampaoli's home? A. Yes, sir.

Q. I have heard the term covering agent. I assume that means other agents, is that correct? A. That means agents who are charged with the surveillance of the activities of the agent and the suspect.

Q. Agents who are charged with the surveillance of the agents and the suspects? A. Of the agent, referring to myself in this particular instance, and the suspect with whom I am working.

Q. In other words, have you ever heard the word "plant" used? A. Yes, I have.

Q. And that's a surveillance, is it not, a plant? A. Not to my knowledge.

(113-A) Q. When you watch a house, you have a plant on the house. Have you ever heard that expression? A. A plant can be used in many ways.

(114) Q. Outside of botany have you ever heard the word plant used in respect to police work? A. Yes, sir.

Q. And that means surveillance, doesn't it? A. No, sir. In our terms, it doesn't mean surveillance. A plant in our terms means a place where a cache of narcotics is stored.

Q. That's what is called a plant? A. Yes, sir.

Q. You call it a covering, right? A. Yes, sir.

Q. Now, how many agents, if you know, were covering Giampaoli's home on the 29th of June? A. My best recollection, sir, I believe there were three.

Q. Three in addition to yourself and Zirilli? There were three other agents? A. Yes, sir.

Q. By the way, is your line, isn't it called a drop and not a plant? A. No, sir. A plant is a place where narcotics are stored, a drop is where a delivery is made and somebody else picks it up after it is dropped there.

Q. Do you know the names of those agents, the cover-

ing agents? A. My best recollection, I believe it was Agent Miller, Agent Tartaglino and possibly Agent Ferro.

(115) Q. Agent who? A. Ferro, F-e-r-r-o.

Q. Was there an Agent Costa there? A. Possibly.

Q. Agent O'Connor? A. It could be any one of those.

Q. It could be all of them? A. No. To my recollection there weren't more than three.

Q. Now, when you left to go to Jersey, you went in whose car? A. Ugo, I mean Aniello Santagata's car.

Q. In Santagata's car?

Mr. Soviero: You are talking now about June 29th?

Mr. Brodsky: That's what I thought.

The Court: The trip to New Jersey?

Mr. Brodsky: Yes, June 29th, am I right?

The Witness: Yes.

Q. There is no confusion in your mind, is there, Mr. Witness? A. No, sir.

Q. And what kind of an automobile does Santagata—or what kind of an automobile did he drive? A. My best recollection it was a Lincoln.

Q. What was the color of it, do you know? A. That I don't recall. It was a dark color. It wasn't black, but it was dark as opposed to cream.

(116) Q. It wasn't black? A. To my best recollection it wasn't black.

Q. At any rate it wasn't a Chrysler, was it? A. No, sir. It definitely was not a Chrysler.

Q. Now, about what time did you leave to go to Jersey on June 29, 1955, with Santagata and Giampaoli? A. Approximately 7 in the evening.

Q. Seven in the evening. And as you left the house did

you signal the agents that you were leaving with Santagata and Giampaoli? A. No, sir, I didn't signal them.

Q. You didn't? A. No, sir.

Q. Had there been any arrangement made between—among, rather between you, Zirilli and the agents as to what they were to do when you left the house? A. Well, the plan was for them to tail the car.

Q. Tail the car. Now, did you know what car they were in, sir? A. No, sir; I didn't.

Q. Did you at any time see them? A. No, sir, I didn't.

Q. The other agents? A. No, sir, I didn't.

Q. Either tailing you in Brooklyn or New York or in Jersey? (117) A. No, sir.

Q. At any time did you see them in Jersey? A. No, sir.

Q. Now, you say you went to Newark and you spoke about that intersection of North 6th Street and 1st Avenue and Bloomfield Avenue, right? A. That is correct.

Q. You say you gave Santagata the money, $2500, is that correct? A. That is correct.

Q. About what time was it that you gave him the money? A. Approximately 7:45.

Q. Seven forty-five. In other words, it took you about 45 minutes to get to Bloomfield Avenue and First Avenue in Newark from Queens? A. I said approximately 7:45. It could have been an hour. I don't know. I am approximating that.

Q. Now, on June 29th, did you say to Santagata, I don't want to give you the money. I want to meet the contact man myself? A. Yes, sir.

Q. You said that to Santagata? A. Yes, sir.

Q. And Santagata said, you can't do it, right? A. That is right, sir.

Q. Whereupon you gave him the money? (118) A. Yes, sir.

Q. You say you got out of the car and walked toward 6th Street and he spoke to three men? A. No, sir, I didn't say that. I said that he talked to one of the three men.

Q. One of three men? A. Yes, sir, that was standing in a group.

Q. Are you sure that he talked to one of three men standing in a group? A. He walked away with one of the three men standing in a group.

Q. You testified before, haven't you A. Yes, sir.

Q. At any time before, did you say before that he stopped and walked away with one of three men? A. There were three men in a group and he walked away with one of the three men in the group.

Q. I am asking you, have you ever said that, before in a court?

Mr. Soviero: May we have a date?

Q. The time you last testified, did you say that?

Mr. Soviero: May we have the proceeding?

Q. At any proceeding, did you say that he spoke to one man of three? A. To my best recollection, yes.

(119) Q. Now, you remained in the car, right? A. Yes, sir, I did.

Q. You and who else? A. Ugo Giampaoli.

Q. At any time then did you see the agents? A. No, sir, I didn't.

Q. Now, the man that he spoke to, did you know that man? A. No, sir, I don't.

Q. Have you ever seen that man since? A. No, sir.

Q. It isn't the defendant, is it? A. No, sir.

Q. From there you say you went back to the restaurant, is that correct? A. After we returned to New York we went back to—

Q. You went to Anthony's Restaurant? A. Yes, sir.

Q. Who went to Anthony's Restaurant? A. Ugo Giampaoli and myself.

Q. What happened to Santagata? A. He left us at the Harrison station of the Hudson Tubes.

Q. At any time on your way back to New York did you see the agents in the other car? A. No, sir, not on my way back.

Q. Did you see the agents in New York? Did you see (120) the agents in New York? A. After I returned to New York?

Q. Yes. A. I saw them after I left the restaurant, after I talked to Agent Zirilli. I met them about a block away from the restaurant.

Q. You were anxious to discover the source of supply, weren't you? A. Yes, sir.

Q. That was your paramount purpose? A. It certainly is, sir.

Q. That's why you had the bills, the serial numbers of the bills taken down so that they could be traced? A. Yes, sir.

Q. Did you go into any of the local banks in the area of Bloomfield Avenue, North 6th Street? A. No, sir, I didn't.

Q. And record the serial numbers with those banks? A. No, sir, I didn't.

Q. Did you go among the trade people to ask them if they had any hundred-dollar bills or fifty-dollar bills and give them serial numbers? A. No, sir.

Q. Did you make any attempt? A. No, sir.

Q. The next day to trace any of that money? (121) A. No, sir.

Q. The day after? A. No, sir.

Q. Or at any time up to today? A. No, sir.

Q. Now, on July 19th, sir, you did nothing further be-

tween June 29th and July 19th, is that correct? A. I made no purchases between those two dates.

Q. When you and Al met at Giampaoli's home, is that correct, July 19th? A. Yes, sir.

Q. Al Rich, do you know him by any other name besides Al Rich? A. Al, Dick Montano.

Q. Al Rapoli? A. No, I never heard of that.

Q. When had you met Al? A. I believe it was the 29th of June.

Q. 29th of June? A. Of 1955.

Q. Where? A. I met him at Giampaoli's home.

Q. Are you sure it was the 29th of June? A. No, it wasn't the 29th of June.

Q. Think a moment. I don't want to confuse you. A. No, it wasn't that day.

Q. When was it? A. It was at another time. I was introduced to him by Agent Zirilli.

Q. I beg your pardon?

(122) The Court: All right. Read the answer to him.

(The court reporter thereupon read the answer.)

Q. Did Zirilli tell you who he was? A. Yes, sir.

Q. What did he say he was? A. He told me this is Al.

Q. What else did he tell you? A. And he is the one that has been negotiating with me with Ugo Giampaoli.

Q. Al had? A. They were working together.

Q. They were negotiating with Zirilli? A. Yes, sir.

Q. Did he tell you what his position was, Al? A. Al was the one who introduced Zirilli to Giampaoli.

Q. Zirilli was an agent of the Narcotics Bureau? A. He is, sir.

Q. You are an agent of the Narcotics Bureau? A. Yes, sir.

Q. Did he tell you who Al was, what his official capacity was? A. Special employee of the Narcotics Bureau.

Q. Special employee? A. Yes, sir.

Q. What does that mean? A. A man that is assigned as a special employee to assist in, assist United States Agents in enforcing the narcotics law.

(123) Q. Do you have any name for them? A. Special employee, sir.

Q. And are they carried on the payroll as such listing, special employee? A. Yes, sir.

Q. And do you know how much pay they receive? A. That I don't know, sir. I didn't pay the man.

Q. Who pays the man? A. I don't know who paid him.

Q. Does the United States Government pay him? A. Sir, I do not know who pays the man.

Q. He is an informer, isn't he? A. We know them as special employees.

Q. He is an informer, isn't he? A. Special employees is what we refer to them as.

Q. And do you have any funds of your own to use at your discretion employing such special employees? A. I personally don't, sir.

Q. Does your Bureau have such funds, sir? A. Yes, they do.

Q. In other words, they buy information, right?

Mr. Soviero: I object to that, if it please the Court.

The Court: Sustained.

(124) Q. By the way, do you know where Al is now? A. No, sir, I don't.

Q. When was the last time you saw Al? A. The last

time I saw Al, my best recollection was the 19th of July, the night of the 19th of July.

Q. Since then you haven't seen him? A. No, I haven't seen him.

Q. You didn't see him on the 20th? A. No, sir, I didn't.

Q. Didn't see him on August 1st or 2nd? A. No, sir.

Q. August 3rd? A. No, sir.

Q. Disappeared, right? A. I hadn't seen him.

Q. Did you make inquiries for him, sir? A. I had no reason to inquire about it.

Q. Now, you say on July 19th while you were at Giampaoli's home you told him that you were ready for a quarter of a kilowatt—not a kilowatt, a kilogram, right? A. Yes, sir.

Q. That's roughly a half a pound? A. Approximately eight ounces, yes, sir.

Q. And you say that he made a call? A. Yes, sir.

Q. He said it would be ready at about 8 o'clock? A. Yes, sir.

(125) Q. You heard him talk on the telephone? A. No, sir, I didn't hear him talk on the telephone.

Q. Did you hear him dial? A. I heard him dial—no, I didn't hear him dial. He dialed the operator, that's what he did. He didn't dial a number.

Q. He didn't dial a number? A. That's Jersey, naturally.

Q. You didn't know it was Jersey at that time, did you, sir? A. I know it now, sir.

Q. But you didn't know it at that time? A. No, sir.

Q. There was nothing naturally at that time about not dialing? A. No, sir.

Q. Did you hear him talk to the operator? A. I couldn't hear him say anything distinct, or clearly, but I heard him talk to the operator.

Q. You heard him, but did you hear him say anything about Jersey?

Mr. Soviero: I object.
The Court: Overruled.

Q. Did you hear him say anything about Jersey? A. No, sir, I didn't.

Q. But you heard him dial and talk to the operator? A. Yes, sir.

(126) Q. That you are positive of? A. I heard him say something to the operator because there was only one dial and not a sequence of numbers or sequence of dial noises.

Q. One dial? A. Just as you would dial one number or —

Q. In other words, operator? A. Just the one turn, right, sir.

Q. Now, you went with Al and Giampaoli to Newark? A. Yes, sir.

Q. You had the money on you? A. Yes, sir, I did.

Q. How much did you have on you? A. $2500.

Q. Serial numbers had been taken down? A. Yes, sir.

Q. Who had taken down the serial numbers? A. One of the other agents, I don't recall.

Q. You saw him take down the serial numbers? A. I didn't see him take it down, they have got the numbers recorded.

Q. They have got the numbers recorded? A. I didn't see them take it down.

Q. Every time money is given to you, serial numbers are taken down? A. Money for purchases, sir.

Q. Naturally, I know. Is that at all times? (127) A. At all times.

Q. No question about that? A. Not one.

Q. Whether it is the first purchase or the second purchase or the fiftieth purchase, every time the serial numbers are written down, right? A. Precisely.

Q. Now, you say that when you got to Newark did Giampaoli ask you for the money? A. Yes, sir, he did.

Q. By the way, in Giampaoli's home at any time was there any discussion among you and Zirilli and Giampaoli about Zirilli not wanting to go to Mexico until he had his customers all set up here in New York? A. My best recollection, the only thing relative to that was that he was to leave me in complete charge while he was on this trip to Mexico so that his business wouldn't be lost.

Q. In other words, he told Giampaoli that Giampaoli was to deal with you, is that right? A. No, sir, not that I remember. He wasn't to deal with me. Giampaoli was to take me to his source of supply.

Q. He was to take you? A. That was the understanding.

Q. And did Giampaoli say he would take you to the (128) source of supply? A. He agreed then.

Q. When? A. The time that we discussed that.

Q. When was that discussed? A. Before Zirilli left for his trip to Mexico.

Q. When did he leave for his trip to Mexico? A. Well, it was between June 29th and July 19th.

Q. Well, you met Giampaoli on the 29th of June, didn't you? A. Yes, sir.

Q. And then it was discussed that you were to take over the supervision of the alleged business of Zirilli, right? A. After he left on his trip.

Q. And was it at that time that there was talk about your meeting the contact man, the source of supply then? A. The 29th of June it was.

Q. And did Giampaoli say he would take you? A. No. Santagata was the one who was supposed to take me to him.

Q. Santagata was supposed to take you? A. That is right.

Q. Did Santagata agree to take you? A. He agreed in the presence of Zirilli.

Q. And in your presence? A. Yes, sir, I was there too.

(129) Q. That was on June 29th? A. Yes, sir.

Q. That was before you went to Newark? A. Yes, sir.

Q. And then when you got to Newark he refused to take you, right? A. That is right, sir.

Q. Did you say to him, well, didn't we agree that you were to take me to the source of supply? Why don't you take me? A. Yes, sir.

Q. What did he say? A. He said, I don't want to take you.

Q. Did he give you any reason why he didn't want to take you? A. No, sir, he didn't.

Q. Did he say he wasn't permitted to take you direct to the source of supply? A. He didn't tell.

Q. Was there any discussion about if he took you directly to the source of supply his commissions would be cut out? A. No, sir.

Q. Nothing about that? A. No, sir.

Q. Was there any talk about making provisions for his commissions if he brought you direct to the source of supply? (130) A. Not in my presence.

Q. I mean in the home of Giampaoli among you, Zirilli, Santagata and Giampaoli. A. The issue of commissions never came up in the conversation.

Q. Never came up. Now, then, Giampaoli asked you for the money in Newark, right? A. No, sir.

Q. He didn't ask you for the money? A. Are you talking about what date?

Q. July 19th. A. Yes, sir, July 19th.

Q. From now on I am going to talk about July 19th.

Mr. Soviero: Thank you for the announcement.

A. We skipped to the 29th, I was confused.

Q. Now, on July 19th, you had $2500, the serial numbers of which had been taken down, right? A. That is correct.

Q. What were the denominations of those bills, do you recall? A. To my best recollection, they were fifties and hundreds.

Q. And where did you stop the car in Newark? A. At the intersection of 1st Avenue and 6th Street, North 6th Street.

(131) Q. The same place that you had stopped on June 29th? A. No, sir.

Q. How far away? A. Approximately a block.

Q. A block away, but in the same vicinity, right? A. Approximately a block away from the place where it was stopped on the 29th of June.

Q. Was there covering agents there on July 19th at the home of Giampaoli? A. Yes, sir.

Q. How many? A. My best recollection, there were four.

Q. Will you give me their names, please? A. The best I can do in remembering, Miller, Costa, possibly O'Connor.

Q. Who else? A. Possibly O'Carroll.

Q. O'Carroll? A. Yes, sir.

Q. Now, did you see these covering agents when you left Giampaoli's home on July 19th? A. No, sir, I didn't.

Q. Did you see them in Newark on July 19th? A. No, sir, I didn't.

Q. You didn't? A. No, sir.

Q. At no time did you see them on July 19th in Newark? A. No, sir, I didn't.

(132) Q. Are you sure? A. I am positive.

Q. Let me ask you once again. Did you know where the agents were? A. No, sir, I didn't know where they were, what position.

Q. Did you know that they were in Newark? A. I knew that they were assigned to tail the car.

Q. And you didn't see them? A. No, sir.

Q. You didn't see the car? A. No, sir. A good narcotics agent on surveillance does not show himself, to be detected by the suspect.

Q. That's rule 1, isn't it? A. Positively, that's a cardinal rule.

Q. I didn't ask you that, did I? A. I had to explain my answer, sir.

Q. But as you came out after the purchase had been made, you say, didn't you on direct examination say you signaled to the agents that the transaction had been consummated? A. Sir, I stated that I signaled to the covering agents.

Q. Just answer my question.

Mr. Soviero: I submit he is answering the question.

Q. Right, you did say that? (133) A. Yes, sir.

Q. You signaled to the agents that the transaction had been consummated? A. Yes, sir.

Q. You didn't send up a flare, did you? A. No, sir. Do you want to know how I did it?

Q. You signaled to them. Tell us how you did it. A. I was to wave my handkerchief and pretend to wipe my brow with the handkerchief.

Q. You were to wipe your brow? A. Yes, sir.

Q. So that the agents were in close proximity to you at the time, is that correct, the covering agents? A. I don't know how to verify as to the proximity—

Mr. Soviero: Just a moment. That's an assumption.

Q. Well, they couldn't see you wipe your brow if they were at the Holland Tunnel, could they?

Mr. Soviero: I object.
The Court: Sustained.

Q. But you gave that signal, right? A. Yes.
Q. And that was a pre-arranged signal, wasn't it? A. Precisely.
Q. And then you went to the car? A. Yes, sir.
Q. Now, before Giampaoli took you into Campisi's house, (134) did he ask you for the money again? Did he ask you for the money? A. No, sir.
Q. Had you told him that you would not give him the money? A. Yes, sir.
Q. Where? A. In the car.
Q. On the way to Newark? A. In the car, sir.
Q. What? A. After we parked and he asked me for the money.
Q. Then he did ask you for the money. A. You said again.

Mr. Soviero: I object to this line of questioning. You are deliberately twisting the context of this witness's testimony.
The Court: All right. You may object to—
Mr. Brodsky: I didn't know I was that good.

Q. Did he ask you for the money after you parked in Newark? A. Yes, sir.
Q. You refused to give it to him? A. Yes, sir.
Q. What did you say? A. I told him that we do busi-

ness the way my brother-in-law Tony said or otherwise we don't do business.

Q. Did he say anything about the previous occasion, June 29th, that you hadn't been taken to the source of (135) supply? A. No, sir, he didn't refer to that one at all.

Q. Did he say I have no authority to take you to the source of supply? A. No, sir. He stated he didn't want to take me, that's all.

Q. What? A. He just told me he didn't want to take me.

Q. But thereafter when you refused to give him the money he said he would take you to the source? A. He agreed with me and he said, come along.

Q. Did he say I would get my head handed to me if I took you to the source of supply? A. No, sir.

Q. Didn't say that, just took you right to the source of supply, is that correct? A. That is correct.

Q. And when you got to Campisi's house you say Campisi beckoned you in? A. Yes, sir.

Q. How long did this transaction take in Campisi's house, the passage of the money to Giampaoli and the receipt of the narcotics by you? (136) A. From the we entered, the time I left, approximately twenty minutes.

Q. Giampaoli entered with you, right? A. Yes, sir.

Q. Did Campisi say to him, what right have you got to bring this man to my home? A. No, sir.

Q. Didn't seem a bit angry at him, did he? A. No, sir.

Q. What? A. Didn't say a thing.

Q. Very friendly, right? You and Campisi and Giampaoli, right? A. It was apparently friendly, he didn't say no.

Q. Apparently friendly. Everything was friendly. Now, you say you then gave the signal to the agents, right, the purchase was consummated? A. After I left the house.

Q. The money, you had parted with the money, the serial numbers of which had been recorded, right? A. That is right.

Q. Ugo had gone into—Ugo Giampaoli had gone into the kitchen and then came out and lifted this cushion and they gave you the narcotics. It was a complete transaction, right? (137) A. Yes, sir.

Q. You had the source of supply now, right? A. Yes, sir.

Q. Did the agents who you signaled to go into the house and arrest the man? A. No, sir.

Q. Campisi? A. No, sir.

Q. This is July 19th, right? A. Yes, sir.

Q. You made a test of the narcotics? A. I did.

Q. The next day you had a report from the laboratory, on July 20th, did you? A. No, sir.

Q. July 21st? A. No, sir.

Q. Well, there was no question that it was narcotics, right? A. To my field test there was no question.

Q. When did you get a report from the chemist? A. I don't recall the date.

Q. How soon after July 19th did you get a report from the chemist? A. I don't know, sir.

Q. Well, now, you had the source of supply, is that correct? A. Yes, sir.

Q. Thereafter were agents assigned to tail this source of supply, this Thomas Campisi? (138) A. Yes, sir.

Q. They were? A. Yes, sir.

Q. On what date? A. I don't know, sir.

Q. Was it the same night? A. I don't know, sir.

Q. Was it the next day? A. I don't know.

Q. Was it the day after? A. I don't know.

Q. Was his house placed under surveillance? A. To my recollection it was as part of the investigation.

Q. When? A. I don't know the date, sir.

Q. Was he arrested on July 20th, sir? A. No, he wasn't.

Q. Did you make any attempt to arrest him during the month of July 1955? A. No, sir.

Q. When for the first time did you make out an affidavit for a warrant of probable cause—make out an affidavit of probable cause in order to secure a warrant? A. To my best recollection the first week in August.

Q. Up until that time you made no move to arrest him, is that correct? A. No, sir.

Q. Make any inquiry of the tradespeople there or of the banks as to whether or not they had any hundred-dollar (139) bills or $50 bills? A. I didn't.

Q. What? A. I didn't.

Q. Do you know of anybody who did in your Bureau? A. Possibly was.

Q. What? A. Possibly, I don't know.

Q. Was there any report ever made that there was such a thing done? A. I don't know.

Mr. Brodsky: That is all.

Redirect Examination by Mr. Soviero:

Q. Mr. Brodsky asked you when you first got out a warrant for this man's arrest and I believe you said it was the early part of August, is that right? A. Yes, sir, to my best recollection.

Q. And did you go to the house to make an arrest? A. Yes, sir.

Q. And did you find Campisi at home then? A. No, sir.

Q. When was it that Thomas Campisi, if you know, when was it when Thomas Campisi was finally arrested?

Mr. Brodsky: Just a moment. May we have a conference, if your Honor pleases?

The Court: Yes.

Q. The money, you had parted with the money, the serial numbers of which had been recorded, right? A. That is right.

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Q. They were? A. Yes, sir.

Q. On what date? A. I don't know, sir.

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Q. What? A. I didn't.

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Q. And did you go to the house to make an arrest? A. Yes, sir.

Q. And did you find Campisi at home then? A. No, sir.

Q. When was it that Thomas Campisi, if you know, when was it when Thomas Campisi was finally arrested?

Mr. Brodsky: Just a moment. May we have a conference, if your Honor pleases?

The Court: Yes.

(Sidebar discussion.)

(140) Q. Now, that was in the early part of August—withdraw that.

It was the first week in August that you procured this warrant, is that correct? A. To my best recollection, yes, sir.

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(204) AFTERNOON SESSION—2:00 P. M.

ELMER PALARDY, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Soviero:

Q. What is your present occupation? A. I am a detective sergeant in the Police Department, West Orange, New Jersey.

Q. How long have you been so employed? A. Nineteen years, sir.

Q. Were you always a detective sergeant? A. No, sir.

Q. How long have you been a detective sergeant? (205) A. About seven years.

Q. And were you so employed on January 22, 1956? A. Yes.

Q. Will you tell us the events that transpired on January 22nd, 1956?

Mr. Brodsky: That is objected to, if your Honor pleases. January 22, 1956, is not within the scope of the indictment.

The Court: Will you step up here?

(Sidebar discussion.)

The Court: I will overrule the objection.

Mr. Brodsky: I object to that, if your Honor pleases, on the ground that it is too far removed.

The Court: Overruled.

A. With warrants that we had received from the West Orange Police Department, Detective Sergeant Branford, Detective Roberts, Detective O'Rourke and myself, we proceeded to Newark, New Jersey. With warrants for the residence of Campisi, 265—14th Avenue. We proceeded to Newark Police headquarters where we obtained the services of Detective William Lanno of that department.

From there we went to a cellar at 345—15th Avenue to look for evidence—

Mr. Brodsky: Now, if your Honor pleases, I object (206) to that.

Mr. Soviero: I move it be stricken.

The Court: Strike it.

Q. Did there come a time on January 22, 1956, that you arrived at the Campisi home at 265 14th Avenue, Newark, New Jersey? A. Yes, sir.

Q. And about what time of the day was that? A. About 3:30 p. m.

Q. What did you do when you got there? A. We went into—we rang the doorbell, Mrs. Campisi and her daughter came to the door. In the meantime we had deployed two of our detectives downstairs, outside of the premises.

Q. Did you enter the premises? A. Detective Lanno, Detective Roberts and myself entered the premises after being admitted by Mrs. Campisi.

Q. What did you do after you got inside? A. We informed Mrs. Campisi of our mission.

Mr. Brodsky: I object to anything he told Mrs. Campisi.

The Court: Yes, strike it.

Q. Tell us what you did. A. We went inside with the warrants we had and made a (207) search of the second floor, that would be the Campisi apartment.

In a bedroom in the northeast corner under a bed I found a man was lying under the bed with an underwear top, a pair of slacks and a pair of shoes.

Mr. Brodsky: I move to strike that out, if your Honor pleases. I move that the entire line of testimony be stricken.

The Court: Overruled.

Mr. Brodsky: I respectfully ask for the withdrawal of a juror and the declaration of a mistrial.

The Court: Overruled.

Q. Now, do you see that man in the court here today? A. Yes, sir.

Q. And will you point him out to us? A. He is sitting over there at the second table there facing me.

Mr. Soviero: Indicating Thomas Campisi, the defendant.

Q. Now, did you have a conversation with this man at this time?

Mr. Brodsky: I object to any conversation, if your Honor pleases.

A. Yes, I had a conversation.

(208) Q. Will you tell us what you said to him and what he said to you?

Mr. Brodsky: Did I have a ruling on my objection?

The Court: Yes. Overruled.

A. I asked this man what he was doing under the bed.

Q. What did he say? A. He said he was painting the ceiling.

Q. What happened then? A. I asked him to get out from underneath the bed and to identify himself. He identified himself.

Q. Did he get out from underneath the bed? A. Yes, and he identified himself as Thomas Campisi, age forty-five, of that address.

Q. Tell us what happened after that. A. We waited around the premises for a suspect who we had in a robbery who we had in our town.

Mr. Brodsky: I now ask for withdrawal of a juror and declaration of a mistrial.

The Court: Strike it out and the jury is instructed to ignore that statement.

Go ahead.

Mr. Brodsky: Will your Honor rule on my motion?

The Court: I deny the motion.

(209) Mr. Brodsky: I respectfully except.

Q. Tell us what happened with respect to the defendant Thomas Campisi after that and confine yourself solely to what happened with respect to the defendant, Thomas Campisi. A. As detective—we stayed around the premises for a short time. As we started to descend down the front stairs with Mr. Campisi in custody, Detective Roberts, Detective Lanno and myself, as we started down the landing, Detective Lanno shouted, "He is gone."

Mr. Brodsky: I object to what the detective shouted.

Mr. Soviero: This is in the presence of the defendant.

Mr. Brodsky: How could it be?

The Court: Was he there?

The Witness: Yes.

Q. Was the defendant there at that time? A. Yes.

Q. And what did Detective Lanno say? A. He shouted, he is gone. I in turn, I ran downstairs out the front of the premises. I alerted the two detectives we had downstairs. I immediately went around the rear of the premises and kicked the door in. Mr. Campisi was trying to make an escape. He ran upstairs again.

Mr. Brodsky: I move to strike it out.

(210) Mr. Soviero: I consent to strike it out.

Q. When you kicked the door in what did you see? A. Mr. Campisi.

Q. Did Mr. Campisi—what did Mr. Campisi do after you kicked the door in? A. He turned around and dashed upstairs. He dashed through the kitchen through an open window to a garage roof and ran thirty or forty feet, jumped off the roof and disappeared.

I immediately ran down the front entrance again and turned east, ran east, and I apprehended Mr. Campisi at gunpoint about three or four doors down trying to climb over a fence.

Q. What did you do with him after that? A. Placed him into a police car, brought him to Newark police headquarters where he was turned over to Federal authorities.

Mr. Soviero: You may inquire, Counselor.

Cross Examination by Mr. Brodsky:

Q. Detective Sergeant Palardy, when you entered the Campisi home, you didn't go to arrest Thomas Campisi, did you? A. No, sir.

(211) Q. Your warrant was not for Thomas Campisi, was it? A. No, sir.

Q. You didn't know that there was such an individual as Thomas Campisi, did you? A. No, sir.

Mr. Brodsky: That is all.

Redirect Examination by Mr. Soviero:

Q. After you got to Thomas Campisi's home—

Mr. Brodsky: Now, if your Honor pleases, in view of this testimony, I move for the withdrawal of a juror and declaration of a mistrial.

The Court: Motion denied.

Mr. Brodsky: Exception.

Q. Now, after you got to Thomas Campisi's home did you learn something about the defendant Thomas Campisi?

Mr. Brodsky: I object to anything he might have learned, if your Honor pleases. That is hearsay and I submit that this is not proper.

Mr. Soviero: Before we get any speeches may we approach the bench, if your Honor please?

Mr. Brodsky: May I please make my motion for the record whether it is a speech or not and I submit that this is not proper rebuttal—redirect, rather.

(212) The Court: Overruled.

Q. Did you learn something concerning the defendant Thomas Campisi?

Mr. Brodsky: Again I renew my motion to that.

Mr. Soviero: You have already ruled on his objection and overruled it.

The Court: No. You have got two matters here. That was a separate matter. Step up to the bench.

(Sidebar discussion.)

Mr. Soviero: That is all, Sergeant. Thank you very much.

The Court: Any further questions?

Mr. Brodsky: No.

WILLIAM LANNO, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Soviero:

Q. Now, Mr. Lanno, will you tell us your present occupation? A. Detective, assigned to the Newark Police Department for the past seventeen years.

Q. So that you were employed as a detective on January 22, 1956? (213) A. I was.

Q. Now, together with Sergeant Palardy did you go to a premises in Newark, New Jersey, on September 22, 1956? A. On January 22, 1956.

Q. I am sorry. What did I say? I meant January 22, 1956. A. You said September.

Q. I meant January 22, 1956. A. I did.

Q. And will you tell us what happened—withdrawn. Do you know the name or the number of that premises? A. I believe it was 285 14th Avenue, Newark, second floor, Campisi is the name.

Q. And will you tell us what you did when you got there?

Mr. Brodsky: I object to this if your Honor pleases upon the ground already stated in my objection—in my objection to the previous witness.

The Court: Overruled.

Q. Tell us what you did when you got there. A. The vestibule door downstairs was locked. We rang the bell. A woman came down to the door and let us in. Myse. Detective Sergeant Palardy and Detective Roberts of Wes. Orange Police Department, we continued up the stairs to the living quarters of Mr. and Mrs. Campisi. We explained our (214) visit, the nature of it.

Q. Don't tell us any more about the explanation. What did you do after that? A. We made a search of the premises.

Q. And what did you find, if anything? A. In a bedroom in a closet of this bedroom, in a grey suit inside pocket we found a small cardboard container, about four inches long and an inch or an inch and a quarter in width, containing—

Mr. Brodsky: I object to that, if your Honor pleases.

The Court: Overruled.

Q. Tell us what it contained. A. It contained a syringe, a hypodermic needle, a small silver spoon with a curved handle and a packet of white powder.

Q. And did you find—

Mr. Brodsky: Now, if your Honor pleases, I again ask for the withdrawal of a juror and declaration of a mistrial.

The Court: Overruled.

Mr. Brodsky: Exception.

Q. Was there somebody else besides Detective Sergeant Palardy and Roberts and yourself in that bedroom? (215) A. Will you repeat that, please?

Q. Was there somebody else besides Detective Sergeant Palardy, Roberts and yourself in that bedroom? A. Yes, sir.

Q. Who else was there? A. Detective Sergeant Palardy of West Orange was searching another portion of the house and he found under a bed, Mr.—

Mr. Brodsky: I object. He certainly isn't competent to testify what somebody else found in another portion of the house.

Mr. Soviero: I move the answer be stricken.

The Court: Did you see it?

The Witness: I did.

Q. Was that in the same room you were in? A. Same room.

Q. Was it in another portion of the house that they were searching, Palardy was searching? A. He was searching in the same bedroom that I was in.

Q. Was there somebody else in that bedroom beside the three of you, the three officers? A. There was.

Q. And is that man in the courtroom here today? A. Yes, sir.

Q. Will you point him out to us? (216) A. The man on the end there with the light tan suit.

Mr. Soviero: Indicating the defendant, Thomas Campisi.

Q. Will you tell us what happened after that with respect to the defendant Thomas Campisi?

Mr. Brodsky: I object to this, if your Honor pleases.

The Court: Overruled.

A. After Detective Roberts and myself found this packet in the inside coat pocket of the grey suit, upon seeing Mr. Campisi we asked him did this belong to him. He denied any knowledge or ownership of the packet or the grey suit.

Q. What happened after that? A. Well—

Q. Let me see if I can shorten this. Did there come a time when you, Palardy and Roberts along with Campisi were leaving the apartment? A. We were preparing to leave with young Campisi and Mr. Campisi, the man sitting there now.

Q. And as you were leaving the apartment did something occur? A. It did.

Q. Will you tell us what happened? A. Just as I reached the hallway, the doorway leading to the hall, Mr. Campisi's home, he was on my right and at that time Detective Sergeant Palardy had already been in the (217) front, came running upstairs, said there is a—

Mr. Brodsky: I object to what he said.

The Court: Yes. Strike it out.

Q. Was that said in the presence of the defendant?

Mr. Brodsky: I object to anything said in the presence of the defendant. It is elementary that merely because it is said in front of the defendant doesn't make it admissible unless the defendant concurred, acquiesced or made a response to the statement.

Mr. Soviero: Or unless he did what he did. I would first like to present this proof to the Court.

Q. Was that said in the presence of the defendant, Thomas Campisi? A. At that time he started, he had left.

Q. As that was said?

Mr. Brodsky: As what was said?

Judge, I object to this entire line of questioning. Now, if your Honor pleases, I ask for the withdrawal—I don't need any help from you, Mr. Soviero. I know how to make my motion. I ask for the withdrawal of a juror and declaration of a mistrial on the ground that the prejudicial evidence which has been permitted here is in no way, shape, manner or form connected with this defendant.

(218) The Court: Overruled.

Mr. Brodsky: I respectfully except.

Q. What was it that Detective Sergeant Palardy said to you immediately at the time or about the time that Thomas Campisi commenced the flee?

Mr. Brodsky: Just a moment. We have no proof that he commenced a flee.

Mr. Soviero: We have had a witness here—

Mr. Brodsky: I don't care what—

The Court: I will sustain the objection. What happened at that time? Just state what happened.

The Witness: At that time Mr. Campisi who was on the right side of me fled back in toward the kitchen and there is a doorway leading downstairs and Mr. Palardy came up the stairs and took the chase. I stood before—by the door and I was closed outside, locked outside, you might say.

Q. Now, you said at that time, what do you mean by

the expression at that time? When did this happen? A. At the time Detective Sergeant Palardy started up the stairway to make a remark about Mr. Campisi.

Q. What was the remark? A. That he was wanted.

Mr. Soviero: That is all.

(219) Mr. Brodsky: I move to strike that out, if your Honor pleases.

The Court: Overruled.

Cross Examination by Mr. Brodsky:

Q. Detective Lanno, did you have a warrant for the arrest of Mr. Thomas Campisi when you went there with Detective Sergeant Palardy? A. I did.

Q. You did have a warrant for Mr. Campisi, Mr. Thomas Campisi? A. Detective Sergeant Palardy had the warrant.

Q. He had the warrant for Thomas Campisi? A. Peter Campisi, the son.

Q. You understand English, sir, I asked Thomas Campisi.

Mr. Brodsky: I ask your Honor to advise the jury to disregard that remark.

The Court: Yes.

A. I had no warrant for Thomas.

Q. You weren't looking for Thomas? A. No, sir.

Q. You didn't know that Thomas was there, right? A. That is correct.

Q. You didn't know that there was such a person as Thomas, did you? (220) A. Correct.

Q. What? A. That is correct.

Q. And then you tell us now that you say that Detective

—that Sergeant Palardy said he is wanted? A. That is correct.

Q. Did he have a warrant for him? A. No, sir.

Q. Was he looking for him when he went there? A. No, sir.

Mr. Brodsky: That is all.

Mr. Soviero: That is all.

The Court: All right. Step down.

Mr. Soviero: At this time, if your Honor pleases, I would like to offer in evidence the duplicate original of the warrant of arrest issued by the Commissioner of the Eastern District, New York, dated the 2nd day of August, 1955, for Thomas Campisi.

Mr. Brodsky: No objection.

The Court: All right. Mark it.

The Clerk: Exhibit 11.

(The above-referred to warrant was marked Government's Exhibit 11 in evidence.)

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(221) JAMES G. ROBERTS, a witness called on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Soviero:

Q. Will you tell us your occupation, please, Mr. Roberts? A. Policeman of the Town of West Orange.

Q. Were you so employed on January 22, 1956? A. I was.

Q. And pursuant to that employment were you with Sergeant Elmer Palardy and Detective William Lanno of the Newark Police Department on that day? A. I was.

Q. Did you proceed somewhere in the company of those two gentlemen? A. Yes.

Q. Where did you go? A. To 265 14th Avenue, Newark.

Q. And do you know what that premises is? A. It was the home of a Peter Campisi.

Q. Now, will you tell us—

Mr. Brodsky: Now, if your Honor pleases, I now ask for the withdrawal of a juror and the declaration of a mistrial.

The Court: Denied.

(222) Mr. Brodsky: Exception.

Q. Did you enter that premises? A. I did.

Q. Will you tell us what happened after you entered the premises? A. I entered a bedroom on the northeast side of this apartment which was on the second floor. I was making a search of a closet in that bedroom and a man came out from underneath a bed.

Q. Is that man in this courtroom today? A. Yes, he is.

Q. Will you tell us who he is? A. Thomas Campisi.

Q. Can you point him out? A. Yes, I can.

Q. Will you do that for us? A. The man sitting over here with the light suit.

Q. Light suit, did you say? A. Yes, sir.

Mr. Soviero: May the record indicate that he has identified the defendant, Thomas Campisi.

Q. Did there come a time when you were leaving that premises? A. Yes.

Q. Will you tell us what happened then? A. I was proceeding down a stairway with Peter Campisi.

Mr. Brodsky: I ask for the withdrawal of a juror and declaration of a mistrial.

(223) Q. Tell us what happened.

The Court: Yes. Strike out what happened with Peter. Motion denied.

Mr. Brodsky: Exception.

Q. What happened with respect to the defendant Thomas Campisi at that time? A. Thomas Campisi was behind me as I was starting down a stairway leading to the first floor and I heard Sergeant Palardy who was in front of me say, Thomas Campisi is wanted. I looked around to see where Thomas was and he wasn't anywhere in sight at that time.

Q. And what happened after that? A. I proceeded to the street with my prisoner.

Q. Did you see Thomas Campisi again? A. Yes, I did.

Q. Will you tell us the circumstances under which you saw him for the second time or for the next time, rather? A. I saw him coming over a fence on 14th Avenue.

Q. And was somebody else in the vicinity there? A. Yes, sir, Sergeant Palardy.

Q. And did you see something happen between Sergeant Palardy and the defendant Thomas Campisi? A. I saw Sergeant Palardy take Thomas Campisi into custody.

(224) Q. What did he do? A. He had him by his coat.

Q. Did he have anything in his hand? A. Sergeant Palardy had his gun out.

Mr. Soviero: That is all.

The Court: Any questions?

Mr. Brodsky: Are you through with him?

Mr. Soviero: Oh, yes. I thought I indicated that. I am sorry.

Cross Examination by Mr. Brodsky:

Q. Mr. Roberts, when you first saw Campisi you were with Detective Sergeant Palardy, is that right? A. Yes, sir, and Detective Lanno.

Q. What? A. Along with Detective Lanno, the three of us.

Q. Did you hear Detective Sergeant Palardy question the defendant? A. Yes, I did.

Q. Did he ask him what his name was? A. Yes.

Q. Did he give him his name? A. Yes.

Q. Did he then say to you that he is wanted? A. Not at that particular time.

Q. Not at thaf particular time, right? A. That is right.

(225) Q. Did he arrest him immediately? A. Did he arrest him immediately?

Q. Yes. Did he take him to the police station? A. No, sir.

Q. How long afterwards did you go to the police station? A. It was after his son came home.

Q. How long after, sir? A. Probably, if my memory
6 serves me correctly, about two hours.

Q. About two hours later, right? A. Yes.

Q. When you went to the home of the Campisis did you have a warrant for Mr. Thomas Campisi's arrest? A. No, sir.

Q. Were you looking for Mr. Thomas Campisi? A. No, sir.

Q. Did you know he was there? A. No, sir.

Q. Had you ever heard the name of Thomas Campisi before you went there? A. No, sir.

* * * * *

(238) October 30, 1956.

CHARGE OF THE COURT:

The Court: Ladies and gentlemen of the jury. Now that the presentation of evidence in this action has been completed, it is the function of the Court to instruct you on the law.

You are the sole judges of the facts in the case.

The statements made by counsel in support of their objections, in summations or otherwise, are not proof, although they may be helpful to you in ascertaining the truth. Your recollection of the testimony, however, is what you should take into consideration in arriving at your verdict.

As you know, the Court was called upon to make a number of rulings in the course of the trial in admitting or excluding evidence, or otherwise. You are bound by those rulings, as it is the Court's duty to rule upon all matters of law, and to instruct you on the law. The evidence, as distinguished from the law, is within your province to consider.

Disregard all evidence which the Court ordered stricken from the record. None of the rulings made by (239) the Court or statements made by it are to be regarded by you as an indication of the Court's opinion of whether the defendant is guilty or not guilty.

The complainant in this case is the United States of America, also referred to as the Government. The defendant, or the accused, is Thomas Campisi.

The Government as a party is considered the same as any other party and its counsel, the United States Attorney, the same as counsel for any other party.

The grand jury is a body of citizens called together by law to inquire as to whether any crimes have been com-

mitted and to take the testimony of witnesses thereto and to present indictments against any person of persons the grand jury has probable cause to believe committed such crimes. After hearing witnesses, an indictment was voted against the defendant. The indictment is no more than an accusation or charge against the defendant upon which he is brought to trial in this court. It is no evidence of the defendant's guilt.

The defendant by his plea of not guilty has denied each allegation of the indictment and has placed each allegation in issue.

There are two separate counts or charges in the (240) indictment.

The first count charges the defendant with the crime of conspiracy; the second count charges the defendant with the sale of heroin.

The indictment as to count 1 in substance is that from on or about and between the first day of January, 1955 and the third day of August, 1955, within the Eastern District of New York, the defendants, Charles Campisi, Thomas Campisi, Frank Giampaoli, Ugo Giampaoli and Aniello Santagata did unlawfully, wilfully, knowingly and feloniously conspire, confederate, plan and agree together and with other persons unknown to the grand jury to commit offenses against the United States, to wit: to import heroin into the United States contrary to law and knowingly to receive and conceal heroin so imported, and to sell heroin without written orders duly required by law and that in pursuance of said unlawful conspiracy and for the purpose of effecting the objects thereof the following overt acts were committed—and I will refer to those overt acts in just a moment.

Now, the law as to conspiracy in substance is, if two or more persons conspire either to commit any offense against the United States, or to defraud the (241) United

States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be guilty of that crime.

Now, I just want to elaborate on what is meant by a conspiracy.

In that count 1, the defendant is not charged with the commission of the crime of selling heroin. He is charged with entering into an agreement or conspiracy with others to commit that crime.

A conspiracy is an agreement between two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or some purpose not in itself unlawful by criminal or unlawful means.

It is not necessary that there be an express agreement in words between each of the accused to constitute a conspiracy, but it is sufficient if you find that they acted together with a common understanding and a common intent to accomplish an unlawful purpose, or to accomplish a lawful act by unlawful means.

It is not necessary that the participation of the (242) accused shall be shown by direct evidence. The connection may be inferred from such facts and circumstances in the evidence as legitimately tend to sustain that evidence.

It is not necessary that each of the conspirators shall participate in or have knowledge of all of the operations or that they be acquainted with each other. Any one party to the conspiracy may join at any point in its progress and be held responsible for all that may be or has been done.

A defendant may not be convicted because of his acquaintance or association with a conspirator or conspirators unless it is shown that such defendant had knowl-

edge of and with such knowledge participated in the conspiracy or in the furtherance thereof.

Count 1 of the indictment charges the commission of overt acts or occurrences in pursuance of and in furtherance of the conspiracy. In other words, acts taking place after the making of the agreement and before the completion of the crime of conspiracy. There can be no determination by you that there was a conspiracy unless you find that at least one of those overt acts took place, an act flowing from the conspiracy. One overt act is sufficient, coupled with (243) a finding that there was a conspiracy. It is not necessary to find that all of the accused participated, namely all of those named in the indictment, in the overt act or acts, nor that the overt act be a criminal act. Now those overt acts are as follows:

1 On or about the 18th day of April, 1955, in the vicinity of the Bella Roma Restaurant at 52 Alden Square, Hempstead, Long Island, New York, the defendant, Ugo Giampaoli, delivered approximately fourteen and a half grains of heroin to Anthony Zirilli.

2. On or about the 20th day of April, 1955, the defendants, Ugo Giampaoli, Aniello Santagata, Charles Campisi and Thomas Campisi met in the vicinity of 458 South Eleventh Street, Newark, New Jersy.

3. On or about the 20th day of April, 1955, in the vicinity of 143-43 Springfield Boulevard, Springfield Gardens, Long Island, New York the defendants, Charles Campisi, Thomas Campisi, Ugo Giampaoli and Aniello Santagata, sold approximately eight ounces and 160 grains of heroin to Anthony Zirilli.

4. On or about the 19th day of May, 1955, in the vicinity of the parking lot adjacent to the Mona Lisa Bridal Shop, 425 Flatbush Avenue Extension, Brooklyn, (244) New

York, the defendant, Aniello Santagata, concealed eight ounces and 234 grains of heroin in a brown paper package located in the glove compartment of his automobile, a 1953 Lincolnn Capri sedan, New Jersey license No. P/G 11 N.

5. On or about the 19th day of May, 1955, in the vicinity of the Mona Lisa Bridal Shop, 425 Flatbush Avenue Extension, Brooklyn, New York, the defendants, Ugo Giampaoli and Aniello Santagata sold approximately eight ounces and 234 grains of heroin to Anthony Zirilli.

6. On or about the 29th day of June, 1955, in the vicinity of Anthony's Restaurant, 54th Street and Lexington Avenue, New York, New York, the defendants, Ugo Giampaoli and Frank Giampaoli discussed the sale of heroin to be made to Joseph Tremoglie.

7. On or about the 29th day of June, 1955, the defendant, Frank Giampaoli, drove the defendant, Ugo Giampaoli, to 143-43 Springfield Boulevard, Springfield Gardens, Long Island, New York where they met with the defendant Aniello Santagata and discussed the sale of heroin to be made to Joseph Tremoglie.

8. On or about the 29th day of June, 1955, the (245) defendants, Aniello Santagata, Thomas Campisi and Charles Campisi, met in the vicinity of North Sixth Street and Bloomfield Avenue, Newark, New Jersey.

9. On or about the 29th day of June, 1955, in the vicinity of North Sixth Street and Bloomfield Avenue, Newark, New Jersey, the defendants, Aniello Santagata and Ugo Giampaoli sold approximately eight ounces and 300 grains of heroin to Joseph Tremoglie.

10. On or about the 19th day of July, 1955, in the vicinity of 558 North Sixth Street, Newark, New Jersey, the

defendant, Thomas Campisi, concealed approximately eight ounces and 328 grains of heroin in a brown paper package located under the cushion of an upholstered chair.

11. On or about the 19th day of July, in the vicinity of 558 North Sixth Street, Newark, New Jersey, the defendants, Thomas Campisi and Ugo Giampaoli, sold approximately eight ounces and 328 grains of heroin to Joseph Tremoglie.

If you find beyond a reasonable doubt that there was a conspiracy, namely a common understanding and intent to sell heroin and that the defendant participated in it and had knowledge of its operations and that at least one of the overt acts was committed, then (246) your verdict will be guilty as to the defendant on count 1 of the indictment. If you find beyond a reasonable doubt that the defendant Thomas Campisi so conspired with Ugo Giampaoli and Aniello Santagata or either of them, you may find the defendant guilty on count 1.

If you find that the defendant Thomas Campisi did not so conspire or that there was a reasonable doubt as to whether he did conspire, then you will find him not guilty on count 1.

Count 2 or the second count I should say, which is really count 3 of this indictment in substance charges as follows: that on or about the 20th day of April, 1955, within the Eastern District of New York and the vicinity of 143-43 Springfield Boulevard, Springfield Gardens, Long Island, New York, the defendants Charles Campisi, Thomas Campisi, Ugo Giampaoli and Aniello Santagata, did sell approximately eight ounces and 160 grains of heroin to Anthony Zirilli for the sum of $2,300 without a written order form duly required by law.

Now, the law on that subject of sale of narcotics in substance is as follows: It shall be unlawful for any person to sell, barter, exchange, or give away (247) narcotic drugs

except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Secretary or his delegate, and it is conceded that no such order was issued.

There is another section which is involved in this count on who may be principals and it is as follows: Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal.

So I charge you that if you find beyond a reasonable doubt that the defendant Thomas Campisi did sell heroin or engage in the sale of heroin as mentioned in the count or aided or abetted in that sale, then you will find him guilty on count 3.

On the other hand, if you find that he did not engage in that sale or did not aid or abet it or that there is a reasonable doubt that he did so, then you will find him not guilty on count 3.

The defendant is presumed to be innocent until proven guilty of all the elements of the offenses beyond a reasonable doubt. This does not mean that every item of evidence must be proven beyond a reasonable doubt. Rather the burden of proof beyond a reasonable doubt (248) applies to each charge as a whole. He does not have to prove that he is innocent. The presumption of innocence of the defendant remains until the end of the case, namely, until you, by your verdict, decide the defendant is guilty beyond a reasonable doubt, if you do arrive at such a decision. The burden of proof rests upon the United States to prove the guilt of the defendant, and that burden never shifts.

A reasonable doubt is a doubt arising from the evidence or from a lack of evidence, after consideration of all the evidence. It is not a vague, speculative, imaginary some-

thing, but just such a doubt as would cause reasonable men to act upon it in matters of importance to themselves.

A reasonable doubt does not mean a doubt arbitrarily and capriciously asserted by a juror because of his or her reluctance to perform an unpleasant task. It does not mean a doubt arising from the natural sympathy which we all have for others. It is not necessary for the Government to prove the guilt of the defendant beyond all possible doubt. For if that were the rule, very few people would ever be convicted. It is practically impossible for a person to be absolutely sure and convinced of any controverted (249) fact which, by its nature, is not susceptible of mathematical certainty. In consequence the law says that a doubt should be a reasonable doubt, one for which a reason can be given, not a possible doubt.

Circumstantial evidence consists of facts proved from which the jury may infer, by process of reasoning, other facts sought to be established as true.

Some of the evidence introduced by the Government was circumstantial. Circumstantial evidence must be so convincing that you have no reasonable doubt. If you have a reasonable doubt after you consider all of the evidence, you must find the defendant not guilty . . .

Circumstantial evidence is received and entitled to such consideration as you find it deserves depending upon the inferences you think it necessary and reasonable to draw from such evidence. No greater degree of certainty is required of circumstantial evidence than direct evidence, for in either case you must be convinced beyond a reasonable doubt of the guilt of the defendant. Circumstantial evidence is not on any different or lower plane than other forms of evidence.

Different inferences, however, may be drawn from the facts and circumstances in the case, whether proved by direct or circumstantial evidence. It is for you (250) to

decide and for you alone, which inferences you will draw from the facts. Suspicions and speculations should not enter into your deliberations.

Willfulness is an essential element of the alleged crimes. To do a thing willfully and knowingly, is to do a thing knowing it is wrong.

The matter of the punishment of the defendant, or the extent or amount of it in the event you find the defendant guilty must not enter into your deliberations. That is a matter left solely to the Court, and not to the jury.

Sympathy should not enter into your deliberations and should have no part therein. Both parties stand equal before the Court and are entitled to even-handed justice.

The quality of the testimony of the particular witnesses, regardless of who calls them, rather than the quantity or the number of witnesses is the test to be used in arriving at your decision. You are the sole judges of the credibility of the witnesses and the weight to be given to their testimony. In determining this, you are entitled to take into consideration their bias, if any, their relationship to the parties, their interest in the outcome of the case, (251) if any interest exists, their manner of testifying their candor and frankness and any other test which you would ordinarily use in judging the weight to be given to the statements of persons with whom you come into contact. The same tests apply to witnesses for the Government as they do to witnesses for the defendant, whomever they may be, and whatever positions they may hold.

It is for you, and you alone to decide which testimony you shall accept.

If you find that any witness willfully testified falsely to a material fact in the case, you may disregard his testimony altogether, but you are not bound to do so and you may accept such testimony as you believe to be true and reject such testimony as you believe to be false.

While it is essential that your verdict should represent the opinion of each individual juror, it by no means follows that individual opinions may not be changed by conference in the jury room. The object of the jury system is to secure by a comparison of views and by argument one concerted opinion, provided it can be done reasonably and consistently with the individual convictions of each juror. Each juror should (252) listen with a disposition toward being convinced, to the opinions and arguments of the others. It is not intended that each juror should go into the jury room with a fixed pinion that cannot be shaken, inasmuch as each of the other jurors is honest and intelligent. Your deliberations should be upon the evidence in this case. Ignore any information which may have come to your attention from outside sources.

In this court the rule is that there can be no verdict of the jury either of guilty or of not guilty unless such a verdict is unanimous.

Finally, your verdict, if you agree upon a verdict, should be reported separately by you as follows: On count 1—that's the conspiracy count—guilty or not guilty. Count 3—which is the sale of heroin—guilty or not guilty.

Any of the exhibits which you care to have will be sent to you upon your request.

Now, are there any exceptions to the charge?

* * * * *

(300) Why all the fuss over the delay in arresting? Mr. Brodsky said something that I took personally in the summation and that was the fact that I was trying to convict this man by using a process which is known as guilt by association. I assure you that nothing could be further from the truth and I implore you not to take into consideration the fact that Thomas Campisi's son was wanted by the police in New Jersey. That should not enter into your deliberations at all, and I ask you other jurors to police any

other jurors who attempt to inject that into your deliberations.

I didn't put those police officers on the stand to show that Peter Campisi was wanted for some crime. That is no evidence or indication of Thomas Campisi's guilt. Of course, it isn't; but if you will remember we have evidence in this case that a warrant was issued on August 2, 1955, and if you will remember (301) the defendant, Thomas Campisi, wasn't arrested until January 22, 1956. What was he doing all that time? What was he doing when they found him?

He was hiding under a bed. What did he do when they said: This man is wanted? He ran down the stairs; he ran up into the kitchen; he jumped through an open window, onto a garage roof and how did they finally arrest him? Because he feared for his life. An officer drew a gun on him and said: By God, you better come with me or I am going to shoot, and if he didn't say that in words, I am sure that that is what everybody realizes when you see a gun pointed at you. And why is that important? Does an innocent man flee from the law? Does an innocent man go free confident of the fact that he can disprove the charges against him? Of course you and I know that the latter is true. An innocent man isn't brought in at gun point. That's the reason that those two officers took the stand.

* * * * *

Judgment and Commitment

(317) UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF NEW YORK

No. Cr.44070

[SAME TITLE]

On this 16th day of November, 1956 came the attorney for the government and the defendant appeared in person and with Counsel.

IT IS ADJUDGED that the defendant has been convicted upon a verdict of guilty of the offense of violating T. 18, U. S. C., Secs. 371 and 2; Title 26, U. S. C., Secs. 4705(a) and 7237, in that on or about and between Jan. 1, 1955 and Aug. 3, 1955, in the Eastern District of New York, he conspired with others to unlawfully import and sell heroin in violation of T. 21, U. S. C., Sec. 173; and on or about April 20, 1955 sold approximately 8 ounces and 160 grains of heroin without a written order form duly required by law, as charged in Counts 1 and 3 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) years and fined $1,000.00 on Count One (1), and Three (3)

years and fined $1,000.00 on Count Three (3). Defendant is to stand committed until said fines be paid or otherwise discharged as provided by law. Said sentence of imprisonment to run consecutively.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

WALTER BRUCHHAUSEN,
United States District Judge.

Notice of Appeal

(318)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Criminal No. 44070

[SAME TITLE]

Name and Address of Appellant:

THOMAS CAMPISI
265 14th Avenue
Newark, N. J.

Name and Address of Appellant's attorneys:

DELANEY & DONOGHUE
580 Fifth Avenue
New York 36, New York

Offense:

Sale of narcotics and conspiracy so to do (Title 26, U. S. C., Sections 4705(a) and 7237; Title 18, U. S. C., Section 2; Title 18, U. S. C., Section 371.

Sentenced on November 16, 1956, by Hon. Walter Bruchhausen, United States District Judge, after trial by jury, on Count one, five years and a fine of $1,000.00; on Count three, three years and a fine of $1,000.00; sentences to run consecutively.

Is now confined at the Federal Detention Headquarters, West and 11th Streets, New York City.

Notice of Appeal

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Second Circuit from the above-stated judgment.

Dated: New York, New York
November 26, 1956

/S/ THOMAS CAMPISI

Thomas Campisi
Appellant

CD1411

-57

MICROCARD

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SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
OCT 7 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1957

No. 532

THOMAS CAMPISI,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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580 Fifth Avenue
New York 36, N. Y.

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IN THE

Supreme Court of the United States

October Term, 1957

No.

THOMAS CAMPISI,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

THOMAS CAMPISI, your petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit.

Opinion Below

The opinion of the Court below (Exhibit A, *infra*), has not yet been reported.

Jurisdiction

The judgment of the Court below was entered on September 9, 1957. The jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1254(1).

Constitutional Provisions, Statutes and Rules Involved

Amendment V—Capital Crimes: Due Process

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI—Jury Trial for Crimes, and Procedural Rights

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crimes shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Statutes Involved

TITLE 21, U. S. C., SECTION 174

"§174. Same; penalty; evidence

"Whoever fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported or brought into the United States contrary to law, or conspires to commit any of such acts in violation of the laws of the United States, shall be imprisoned not less than five or more than twenty years and, in addition, may be fined not more than $20,000. For a second or subsequent offense (as determined under section 7237(c) of the Internal Revenue Code of 1954), the offender shall be imprisoned not less than ten or more than forty years and, in addition, may be fined not more than $20,000.

"Whenever on trial for a violation of this subsection the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury."

TITLE 26, U. S. C., SECTION 4706(a)

"§4706. Forfeitures

"(a) Unstamped packages.—All unstamped packages of narcotic drugs found in the possession of any person, except as provided in this subpart, shall be subject to seizure and forfeiture, and all the pro-

visions of internal revenue laws relating to searches, seizures, and forfeiture of unstamped articles shall be extended to and made to apply to the articles taxed under this subpart and the persons upon whom the taxes under this subpart or sections 4721 to 4726, inclusive, are imposed."

TITLE 18, U. S. C., SECTION 371

"§371. Conspiracy to commit offense or to defraud United States

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. June 25, 1948, c. 645, 62 Stat. 701."

Questions Presented

I

Whether the error of the Trial Court in completely failing to charge the jury on the conspiracy count as to the jurisdictional pre-requisite, *i.e.*, that at least some one overt act must be shown to have been committed in the EDNY or that the conspiracy was in fact formed in the EDNY before they could convict, deprived petitioner of the most basic rights of due process under the 5th and 6th Amendments.

II

Whether the petitioner was not placed twice in jeopardy for the same crime in violation of the 5th Amendment by the use by the Government in the second trial in the EDNY of the same evidence upon which petitioner was convicted in the first trial in the District of Newark.

III

Whether petitioner could receive the fair trial guaranteed him by the due process concepts guaranteed all defendants tried under the rules of our jurisprudence by the gratuitous injection of an obviously deliberate and leading question and answer technique calculated to adduce before the jury highly prejudicial and picturesque testimony and innuendoes such as that the Campisi family were all engaged in the narcotic traffic; that petitioner's son was wanted by local police on a burglary charge; that alleged contraband in nowise connected with petitioner was found in the Campisi home; the use for the second time by the Government of evidence of circumstances of petitioner's arrest; and the use for the second time by the Government of evidence that petitioner attempted to escape.

IV

Whether the Trial Court erred in submitting the case to the jury on Count 3 (the substantive count) and Count 1 (the conspiracy count) in view of the paucity of the evidence adduced by the Government to support them.

Statement

Petitioner, among others, was named as a defendant in two separate indictments filed in two separate jurisdictions, based on certain alleged narcotic transactions. The petitioner was first tried and convicted on the one filed in the United States District Court for the District of Newark. He was there charged in two counts, with two separate sales of heroin on July 19, 1955, in Newark, N. J. (See Ex. C annexed hereto).

After his trial, conviction and sentence on this Newark case, he was then placed on trial in the United States District Court for the EDNY on the indictment filed there which charged him in Count 3 with a substantive sale of heroin on April 20, 1955, and in Count 1 with a conspiracy to deal in narcotics covering the period from January 1, 1955, to August 3, 1955. Upon conviction, he received a total sentence of eight years on both counts.

FIRST: The only guide furnished to the jury on this most essential jurisdictional point, *i.e.*, whether any crime was committed in the EDNY by petitioner was the general one in any conspiracy case. At page 242(R) the Court charged:

> "There can be no determination by you that there was a conspiracy unless you find that at least one of those overt acts took place, an act flowing from the conspiracy. One overt act is sufficient, coupled with a finding that there was a conspiracy."

This charge was far from adequate. The conspiracy charged flowed to and from the EDNY, into and through the SDNY and to and from New Jersey, according to the Government. The majority of the overt acts are alleged to

have taken place outside the EDNY (#2, 8, 9, 10 and 11 in Newark; #6 in the SDNY). Thus, it was imperative that the jury be given more of a beacon light as to jurisdiction and venue than the general charge above quoted. The Court attempted to meet this vital pre-requisite to the jury's deliberation by telling the jury (p. 245R): "If you find * * * that at least one of the overt acts was committed, then your verdict will be guilty as to the defendant on Count 1 of the indictment."

The charge is completely barren of any allusion, direct or indirect, to the essential direction to the jury that before it can convict the defendant (who was the only one on trial) they must find as a fact that some of the overt acts charged was committed in the EDNY or that they must find as a fact that the conspiracy was formed in the EDNY.

The jury was thus left completely at sea in the midst of a three district omnibus conspiracy meshed together by the Government by the use of the "prosecutor's delight" from isolated substantive offenses alleged to have taken place in three separate jurisdictions.

The Circuit Court of Appeals dismisses the assertion of this point by petitioner in the Court below with the statement (p. 2313 (Op.)): "The omission was at most an inadvertence. Had appellant requested such an instruction, or excepted on that ground to the charge as given, *we have no doubt the trial judge would have supplied the omission and the verdict would have been the same.*" But no exception was taken, no such request was submitted and appellant's counsel indicated no criticism whatever of any part of the charge. To reverse on such a point as this would be a travesty of justice. *United States* v. *Trenton Potteries*, 273 U. S. 392, 403-4.

To fail to take judicial cognizance of this fatal omission in the most important part of a criminal trial, the Court's charge, would be a travesty of justice, particularly in the light of the many other errors which occurred in this trial.

The error is so fundamental as to warrant this Court in considering it *sua sponte*. Rule 52(b) of the Federal Rules of Criminal Procedure indeed provides that:

> "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the Court."

In *United States* v. *Capitol Meats, Inc.* (C. C. A. 2nd, 1948), 166 Fed. (2d) 537, 538, cert. den. 334 U. S. 812, the Court pointed out:

> "Where the error is so fundamental as not to submit to the jury the essential elements of the offense of which the defendant has been found guilty, an appellate court should notice it sua sponte, Screws v. United States, 325 U. S. 91."

And in *Kawalcuk* v. *United States* (C. A. 6th, 1949), 176 F. 2d 873, 877, the Court pointed out:

> "This Court can nevertheless consider a plain and palpable error, even though not objected to."

The prejudicial effect of such omission to charge, of course, cannot be known. As stated by Judge Learned Hand in *United States* v. *Andolschek* (C. C. A. 2nd, 1944), 142 F. 2d 503, 506, where the Court reversed a judgment of conviction:

> "We cannot of course know, as the record stands, how prejudicial the exclusion may have been, but

> that uncertainty alone requires a new trial; for it does not affirmatively appear that the error was insubstantial within the meaning of 28 U. S. C. A. §391."

This Court, in *McNabb* v. *United States* (1943), 318 U. S. 332, 341, set forth the following guide:

> "The principles governing the admissibility of evidence in Federal criminal trials have not been restricted, therefore, to those derived solely from the Constitution. In the exercise of its supervisory authority over the administration of criminal justice in the federal courts, see Nardone v. United States, 308 U. S. 338, 341, 342, * * * this Court has, from the very beginning of its history, formulated rules of evidence to be applied in Federal criminal prosecutions."

SECOND: Petitioner was tried twice for narcotic dealings; first in Newark and then in the EDNY. In the Newark trial petitioner's conviction was obtained by the use of certain testimony of certain alleged transactions in Newark on July 19, 1955 (See Ex. C, Newark Indictment). On this charge he was convicted and sentenced.

Thereafter, he was placed on trial in the EDNY on similar charges. The same evidence used by the Government in the Newark trial to obtain his conviction there was reintroduced against him; the same witnesses who had previously testified against him were again used by the Government.

Overt acts 10 and 11 in the EDNY trial are the same as the substantive offenses on which he had already been convicted.

Petitioner could not possibly take the stand in his own defense in the trial below, when the Government for the second time paraded before the second jury the same proof of the guilt for which he already stood convicted. The inevitable opening question on cross-examination as to a prior conviction would disclose to the second jury *his guilt in law and in fact* of the commission of overt acts 10 and 11, the last important climax overt acts charged against him in the very conspiracy count *on which he was then being tried;* guilt of appellant before the second jury of the July 19, 1955 transactions, the last stages in the conspiracy, ergo he is guilty of all the prior and collateral facets of the conspiracy whether or not connected with them by any evidence.

The right to take the stand in one's own defense is one of the most sacred in our jurisprudence. To deprive petitioner of a free and untrammeled decision in this respect violates every concept of the safeguards provided an accused under the Constitution and particularly under the 5th Amendment.

THIRD: This Court, in the exercise of the supervisory power over criminal trials should review this case as it did not meet the minimum requirements of due process (*Nardone v. U. S.*, 308 U. S. 338, 341, 342).

(a) Petitioner was the sole defendant on trial in the EDNY. The very first Government witness, a trained narcotic agent, pursuant to what can fairly be characterized as a planned question-and answer technique in this double pronged prosecution brought against petitioner by the Government, was permitted over objection to testify as follows (App. 13 & 14):

"Q. Did you have a conversation with Santagata with respect to a man named Compy? (Motion for mistrial denied)"

The poisonous question is again repeated. And a trained Government Narcotic Agent testified in reply:

"During this conversation with Santagata I told him that I had read in the newspaper about a man named Compy who had been murdered in Newark. He said that he knew the man. He knew the whole family, that in fact the name of the man was Compisi and that they were the people we were doing business with in Newark."

Motion for mistrial again denied. Then the agent continued:

"Santagata continued to say that he could not get pure heroin from these people because they were four brothers and they had many mouths to feed and he said we can't blame them for adulterating the heroin because there are so many mouths to feed and so much money to be paid out."

Certainly, the testimony of this Government agent about reading about a man named Compy who had been murdered in Newark placed appellant in an impossible position before the jury, particularly as we have elsewhere in the trial the testimony of Sgt. Palardy about arresting appellant's son, Peter, in connection with a burglary in New Jersey and the finding of a syringe and powder in a room of the house where appellant was apprehended (See Subd. C hereof).

The allusion to the unproven statement that the entire family was dealing in narcotics was destructively prejudicial.

Any person, no matter his station in life or how heinous the crime of which he stands accused or even convicted, is entitled to more constitutional protection than was afforded appellant here. A greater cloak of constitutional safeguard may well be required in trials involving convicted persons.

It certainly cannot be said that all these cumulative errors are harmless.

In *Kotteakos* v. *United States*, 328 U. S. 750, 1946, at page 764, the Supreme Court said:

> "and the question is, not were they right in their judgment, regardless of the error or its effect upon the verdict. It is rather what effect the error had or reasonably may be taken to have had upon the jury's decision. The crucial thing is the impact of the thing done wrong on the minds of other men, not on one's own, in the total setting. Cf. United States v. Socony Vacuum Oil Co., supra (310 U. S. at 239, 242, 84 L. ed 1176, 1178, 60 S. Ct. 811); Bollenback v. United States, supra (326 U. S. 607, Ante, 350, 66 S. Ct. 402)."

And again, at page 765:

> "But if one cannot say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole that the judgment was not substantially swayed by the error, it is impossible to conclude that substantial rights were not affected. The inquiry cannot be merely whether there was enough to support the result, apart from the phase affected by the error. It is rather, even so, whether the error itself had substantial influence. If so, or if one is left in grave doubt, the conviction cannot stand."

(b) The Trial Court, over objection, permitted the Government, after using such evidence to secure petitioner's conviction in the Newark case, to *re-use* it against him in the Brooklyn case, having no possible connection with the charge on which petitioner was being tried and calculated solely to inflame and prejudice the jury against him to the effect that:

(1) Petitioner's son Peter was a burglar;

(2) petitioner owned narcotic material and equipment of a contraband nature; and

(3) that petitioner attempted to escape.

Sgt. Palardy testified in the prior Newark trial to the apprehension of petitioner in Newark, N. J., on January 22, 1956. (Exhibit "D" hereto is a transcript of his testimony.) Whatever semblance of validity there may have been to the use of such testimony in the first trial in Newark the Government went further and not only duplicated Sgt. Palardy's testimony but added that of two of his brother-officers. Nothing could be more calculated to influence a jury against a defendant and divert it from a true and dispassionate consideration of the evidence in this case. Motions for a mistrial were made and denied on this line of inquiry.

The use of any such testimony as to escape or flight at all must be cloaked with great caution. See *Hickory* v. *United States*, 160 U. S. 408, where the Court said it was not error to admit, evidence of an attempt to escape, the Court laid down this admonition, however, citing *Peo.* v. *Ryan*, 79 N. Y. 593, at page 417. "There are many reasons for such conduct, consistent with innocence, that it scarcely comes

up to the standard of evidence tending to establish guilt, but this and similar evidence has been allowed upon the theory that the jury will give it such weight as it deserves, depending upon surrounding circumstances. The Trial Court failed to charge anything on this point.

Local police officers went to petitioner's home to arrest his son, Peter, and to look for evidence of a burglary. They had no wararnt for petitioner, weren't looking for him and so far as their testimony indicates, they did not know that he even existed. Because, as Sgt. Palardy put it, petitioner's actions were "over suspicious, we kept him under observation *while we were waiting for his son to come home.*" After petitioner's son, Peter, came home, they "decided to also take petitioner to Police Headquarters in Newark".

Petitioner was not under arrest when he broke away. Sgt. Palardy for the second time was permitted to testify that he "captured" petitioner "at the point of a gun". He was even permitted to testify that they had previously made a search of the house and that he had to kick in a door in the process of apprehending petitioner (R. 210).

Detective Lanno, of the Newark Police, was permitted to testify that he made a search of petitioner's house and that in the closet in a separate bedroom, in a grey suit, he found a small cardboard container containing a syringe, a hypodermic needle, a small silver spoon with a curved handle and a packet of white powder. When the officers asked petitioner if he owned it he denied knowledge or ownership of the packet or grey suit. However, in the then cast of the case, the harm was done.

Whether the initial use of such extraneous, highly inflammatory and strongly prejudicial evidence in the Newark case was proper or not is now moot. The Government utilized it in the Newark trial as part of the quantum of proof which resulted in petitioner's conviction there and subsequent sentence on the July 19, 1955 transactions. It had no proper place for the second time in the trial in the Court below and its admission was grave error.

The grave harm to petitioner's right to a finding by the jury of guilt or innocence solely on the issue involved and not on oblique and extraneous matter, was compounded by the manner in which the Government treated it in summation (Appx., page 30):

> "An officer drew a gun on him and said: By God, you better come with me or I am going to shoot, and if he didn't say that in words, I am sure that is what everybody realizes when you see a gun pointed at you. And why is that important? Does an innocent man flee from the law? Does an innocent man go free confident of the fact that he can disprove the charges against him? Of course you and I know that the latter is true. An innocent man isn't brought in at gun point. That's the reason that those two officers took the stand."

This error alone, aside from all the other constitutional imperfections that attended almost every step of this double-pronged prosecution warrants a reversal herein. (See *Pinkerton* v. *U. S.*, 328 U. S. 640, *Krulewitch* v. *U. S.*, 336 U. S. 440, *McNabb* v. *U. S.*, and *Kotteakos* v. *U. S.*, *supra.*)

FOURTH: (a) There was no evidence connecting petitioner with the substantive offense on which he was con-

victed. This substantive offense charged a sale of narcotics on April 20, 1955, in the EDNY by one Charles Campisi, Ugo Giampaoli, Aniello Santagata, and petitioner. So far as the record shows, petitioner was never in the EDNY on this date or at any other time. He could be convicted only on the theory of aiding and abetting. The sale took place at the home of the defendant Santagata in the EDNY. The name of Campisi was never mentioned in this case until May 25, 1955, one month after the alleged sale. As the Court of Appeals states at page 2308 of its opinion:

> "In order to justify the submission of the substantive offense to the jury it was necessary for the prosecution to prove the appellant associated himself with the venture in order to establish that he aided and abetted the commission of the offense charged. United States v. Peoni, 2 Cir., 100 F. 2d 401."

The Government failed to meet this test.

Restricting the proof to this substantive count, the Government's case, conceding to it every possible inference tending to show guilt of the crime charged showed no more than the following:

After some preliminary skirmishing between the co-defendant Giampaoli and a narcotic agent about a purchase of narcotics, the only tangent to petitioner is a trip which two of the co-defendants made to New Jersey where, it is claimed, they came into contact, among others, with the Campisi brothers.

Petitioner entered a car driven by Santagata and then returned to another car allegedly driven by his brother. Both cars proceeded to a building in Newark, N. J., which was entered by Giampaoli, Santagata and petitioner.

Neither Giampaoli nor Santagata testified at the trial so there is no testimony whatsoever as to the nature of any conversations or happenings at this time. Santagata and Giampaoli then returned to New York. Thereafter, a sale of narcotics was made to a narcotic agent in th EDNY.

The Court of Appeals states (p. 2309, opinion) that: "the jury was entitled to find that, from the time Santagata and Giampaoli left Springfield Gardens that afternoon until their return, they had made no other stops than above set forth nor had they met anyone other than the two Campisis."

This is pure surmise applied to a criminal trial of a substantive offense. The entire case of the Government on this substantive count is based on mere surmise, inference, innuendo and supposition. There was no direct evidence whatsoever to support it. Petitioner was not shown to have associated himself in any venture resulting in any subsequent narcotic dealings in this case insofar as this count is concerned. The proof does not meet the test of the *Peoni* case and the indictment should have been dismissed.

(b) The conspiracy count is fatally defective inasmuch as, if anything, it is made up of isolated substantive offenses in which petitioner was not involved, with the exception of the July 19, 1955, transaction in Newark (on which he had already been convicted and sentenced). See *U. S.* v. *Falcone*, 311 U. S. 205, 85 L. Ed. 128, 61 S. Ct. 204, 109 F. 2d 579, C. C. A. 2, 1940; *U. S.* v. *Peoni*, C. C. A. 2, 1938, 100 F. 2d 401; *Tinsley* v. *U. S.*, C. C. A. 8, 1930, 43 F. 2d 890, 892, 893; *U. S.* v. *Koch*, 1940, C. C. A. 2, 113 F. 2d 982.

To demonstrate how petitioner has been engulfed in a morass of facts gathered by the Government by some novel

theory of osmosis, it is pertinent to see how the Government, as the initiator of these prosecutions, has proceeded herein. Petitioner has received five years on a conspiracy charge alleged to have run from January 1st to August 3, 1955 in the Eastern District of New York. Dissection of the conspiracy count as demonstrated herein in Exhibit B hereto, shows that there was no participation in the conspiracy charged, by petitioner and that there was not and could not have been such conspiracy in law or in fact.

Not satisfied with gathering separate and disparate transactions participated in by different and other persons into a continuing conspiracy, the Government even injected into the trial below some oblique sale by Santagata in the vicinity of 34th Street and 3rd Avenue, in the Southern District of New York on August 1st, 1955. This last occurrence was not even alleged as any overt act in the conspiracy. Yet it was used to bind petitioner.

Assuming, arguendo, that petitioner might have participated in some of these transactions in Newark, N. J., he might be guilty of aiding and abetting defendants who directly participated in sales in Newark. He was not legally guilty of any running conspiracy in the Eastern District of New York, extending over a period of seven months, to deal in the importation of heroin into the United States contrary to law and thereafter to sell it.

Assuming the ultimate in the Government's proof, petitioner could be no more than a seller to his co-defendants who were buyers. If parties deal at arms-length; and terms are arrived at as a result of bargaining from adverse positions petitioner could not have any proprietory interest in the disposition of any narcotics after they may have left his possession.

He could have no stake in what was done with them. He would have no knowledge as to whether they were for the consumption of the co-defendant-buyers and, if for resale, in what quantities, in what quality and for what price.

Thus, under the principle of law in the *Falcone, Peoni, Koch* and *Tinsley* cases, *supra*, he could not be a co-conspirator or an aider and abettor under the facts of the record.

Exhibit B, we submit, demonstrates this conclusion.

To assume that every time Santagata has a quantity of narcotics that it came from petitioner flies in the face of all rules of evidence and constitutional safeguards. The denunciation of a Justice of the United States Supreme Court very appropriately fits this record:

> "Mr. Justice Jackson, concurring in Krulewitch v. United States, 1949, 336 U. S. 440, 453, 69 S. Ct. 716, 723, 93 L. Ed. 790, said:
>
> " 'As a practical matter, the accused often is confronted with a hodgepodge of acts and statements by others which he may never have authorized or intended, or even known about, but which help to persuade the jury of existence of the conspiracy itself. In other words, a conspiracy often is proved by evidence that is admissible only upon assumption that conspiracy existed. The naive assumption that prejudicial effects can be overcome by instructions to the jury, cf. Blumenthal v. United States, 332 U. S. 539, 559 (68 S. Ct. 248, 92 L. Ed. 154), all practicing lawyers know to be unmitigated fiction. See Skidmore v. Baltimore & Ohio R. Co. (2 Cir.), 167 F. 2d 54.' * * *
>
> When a prosecutor adds to an indictment a conspiracy count—'that darling of the modern prosecutor's

nursery'—his purpose is to take advantage of this very looseness of admissibility. Among the 'leverages obtained by the prosecution through proceeding as for conspiracy instead of as for the substantive offense is that it may get into evidence against one defendant acts or omissions which color the case against all.' Mr. Justice Jackson, dissenting in Lutwak v. United States, 1953, 344 U. S. 604, 73 S. Ct. 481, 492, 97 L. Ed. 593. See also 56 Col. L. Rev. 1112 (1956). In seeking that advantage, the prosecution assumes the risk that error may fatally weaken the entire interlocked structure."

Thus we have here a fatally weakened structure, lacking legal vitality from its inception and attempted to be strengthened by extraneous matter in violation of appellant's right to a trial guaranteed him by the Constitution of the United States.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Dated: New York, N. Y., October 2, 1957.

Respectfully submitted,

PETER J. DONOGHUE
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New York 36, N. Y.

EXHIBIT A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 382 — October Term, 1956.

(Argued June 5, 1957 Decided September 9, 1957.)

Docket No. 24500

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—v.—

THOMAS CAMPISI,

Defendant-Appellant.

Before:

MEDINA, LUMBARD and WATERMAN,

Circuit Judges.

Appeal from a judgment of the United States District Court for the Eastern District of New York, Walter Bruchhausen, Judge.

Defendant Thomas Campisi appeals from a judgment of conviction and sentence on Counts One and Three of an indictment charging him with conspiracy to deal in heroin and with the substantive offense of a sale of heroin on

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April 20, 1955, in violation of 18 U. S. C. Section 371 and 26 U. S. C. Section 4705(a). Affirmed.

LEONARD P. MOORE, United States Attorney for the Eastern District of New York, Brooklyn, New York (Joseph F. Soviero, Jr. and Margaret E. Millus, Assistant United States Attorneys, Brooklyn, New York, of Counsel), for plaintiff-appellee.

DELANEY & DONOGHUE, New York City (Peter J. Donoghue, of Counsel), for defendant-appellant.

MEDINA, *Circuit Judge*:

The indictment in this case charged, in the first count, a conspiracy to traffic in narcotics between the two Campisi brothers, Charles and Thomas, Ugo Giampaoli, Aniello Santagata and others. The third count alleges a sale of heroin by the Campisis, Giampaoli and Santagata in Springfield Gardens, Long Island, New York, on April 20, 1955. Charles Campisi is a fugitive from justice and was not tried; Giampaoli and Santagata pleaded guilty to the conspiracy and other counts of the indictment and were duly sentenced. The jury found Thomas Campisi guilty of conspiracy and of the substantive offense as charged; he received a three-year sentence on Count One, and a five-year sentence on Count Three, to run consecutively; and he appeals.

Reversal of the judgment is sought because of the alleged insufficiency of the evidence to support a conviction on

either count, and because of various allegedly erroneous rulings by the trial judge, which are said to be so prejudicial as to have deprived appellant of a fair trial. It is also claimed that appellant has been subjected to double jeopardy because a sale of heroin by him in Newark, New Jersey, on July 19, 1955, was one of the overt acts enumerated in the conspiracy count, and evidence thereof was received, despite the fact that appellant had already been convicted of that specific substantive offense in the United States District Court for the District of New Jersey, and given a suspended sentence, sub nom, Gaspero Campisi.

The principal witness for the prosecution was Anthony Zirilli, a Government Narcotics Agent, who, in cooperation with a Special Agent, Dick Montana, often referred to in the testimony as Al, made his initial contact with Giampaoli on March 13, 1955. Giampaoli was the chef at the Bella Roma Restaurant in Hempstead, Long Island, and he lived in a two-story building, with a tenant upstairs, at 143-43 Springfield Boulevard, Springfield Gardens, in Queens. When Zirilli ascertained that Giampaoli had some connection with the traffic in narcotics, he and the other Narcotics Agents working with him embarked upon the undertaking of proceeding on a long range basis in the hope of uncovering the entire group with which Giampaoli was associated, and particularly "the source" from which Giampaoli obtained his supplies of narcotics. As we shall see, "the source" turned out to be the appellant, and his brother Charles Campisi, in Newark, New Jersey.

Posing as a large operator with many customers, Zirilli told Giampaoli at his home in Springfield Gardens on April

16, 1955 that he would soon be ready to make a substantial purchase of heroin and wanted to know how much Giampaoli could procure and what his source of supply would charge for the merchandise. Giampaoli said he would find out; and the following day Zirilli was informed that Giampaoli "could get any amount of heroin," that the quality would be approximately 80% pure and the cost $9500 for a full kilogram and from $2800 to $3000 for a quarter Kilogram. It was arranged that Giampaoli would procure a sample and this was delivered to Zirilli in two cellophane cigarette wrappers on April 18. Some dickering over the quality ensued, Zirilli heard some conversation on the subject by Giampaoli over the telephone, and he finally said he would take a quarter kilogram for $2300, after Giampaoli said "his man" would not take any less than $2000 and he had to make $300 profit for himself.

We now approach the evidence of the sale made on April 20, 1955, as alleged in Count Three. In order to justify the submission of the substantive offense to the jury it was necessary for the prosecution to prove that appellant associated himself with the venture in order to establish that he aided and abetted the commission of the offense charged. *United States* v. *Peoni*, 2 Cir., 100 F. 2d 401.

The actual delivery of this large quantity of heroin was made to Zirilli by Giampaoli a little after 11 o'clock at night on April 20, 1955 at Giampaoli's home. After testifying to the preliminaries as above described, all Zirilli could add of his own personal knowledge was that, after the payment of the money Giampaoli could not at once say

where and when the heroin would be delivered, that pursuant to arrangement Giampaoli and Zirilli met at the race track, where Zirilli was told to come to Giampaoli's house for the heroin that evening. In other words, Giampaoli did not have the heroin in his possession and had to go somewhere to get it.

In the meantime, a number of other Narcotic Agents saw Santagata drive up to Giampaoli's home, while Zirilli was sitll at the race track; Giampaoli got in and Santagata drove his Lincoln, with New Jersey license plate PG11N, out to Kearney, New Jersey, where the Campisi brothers in a Chrysler car met them. Appellant got in the Lincoln and talked a while with Santagata and Giampaoli and then he got back in the Chrysler; there was much going up and down streets and around corners; then appellant got back in the Lincoln, which proceeded to a building at 458 South 11th Street, Newark, which appellant, Giampaoli and Santagata entered. Shortly thereafter they came out, and Santagata drove Giampaoli back to Giampaoli's home in Springfield Gardens, where Giampaoli, who did not have the heroin when he left Zirilli at the race track, pulled it out of his pocket and turned it over. From the testimony the jury was entitled to find that, from the time Santagata and Giampaoli left Springfield Gardens that afternoon until their return, they had made no other stops than above set forth nor had they met anyone other than the two Campisis.

The proof to sustain the conviction on the conspiracy count, much of which had considerable probative force in connection with the substantive charge, covered a wide

range. And we shall proceed briefly to relate the facts in chronological sequence.

When the first quarter kilogram was delivered by Giampaoli on April 20, 1955, Zirilli did not know of the existence of Santagata, but he had already complained of the quality of the heroin in the sample and he threw out a few hints respecting the possibility of larger transactions, perhaps in Mexico on a joint basis. These Giampaoli evidently passed along to Santagata, as Zirilli intended.

On May 16, 1955, Zirilli told Giampaoli he would soon be ready to purchase some more heroin. On May 18 they met at Giampaoli's home and there was the usual telephoning. At first Giampaoli was going to deliver the narcotics at the Bella Roma Restaurant later that evening, but when Zirilli met him at the Bella Roma Restaurant he said he couldn't do it until the next day. On May 19 they met again at the Bella Roma Restaurant and Giampaoli said "There was no need for him to go to Newark since his man was going to have the heroin with him." Accordingly, at Giampaoli's instructions, Montana drove Zirilli and Giampaoli to Flatbush Extension opposite the Mona Lisa Bridal Shop in Brooklyn. They went in and there was Santagata to whom Giampaoli introduced Zirilli for the first time. There Santagata asked Giampaoli if Zirilli was the one who had been talking about a trip to Mexico, but the subject was put off and they went out in the parking lot where, in the view of agent O'Connor, a Government witness at the trial, Santagata reached into the glove compartment of his car and delivered to Zirilli a brown paper package which contained the second quarter kilogram of heroin.

Exhibit A

It would have been possible to arrest Giampaoli and Santagata at once, but Zirilli and his superiors were after bigger game. The Campisis were implicated too, although their precise role was not yet completely established. But, on May 25, 1955, shortly after the purchase of the second quarter kilogram, in a conversation at Giampaoli's home Santagata told Zirilli that he and Giampaoli were getting the heroin from the Campisis in Newark.

The admission of this conversation, over objection, is one of the grounds urged for reversal. The question put to Zirilli called for a conversation with Santagata "about a man named Compy." The answer is:

> During this conversation with Santagata I told him that I had read in the newspaper about a man named Compy who had been murdered in Newark. He said that he knew the man. He knew the whole family, that in fact the name of the man was Campisi and that they were the people we were doing business with in Newark. * * * Santagata continued to say that he could not get pure heroin from these people because they were four brothers and they had many mouths to feed and he said we can't blame them for adulterating the heroin because there are so many mouths to feed and so much money to be paid out.

The identification of the Campisi brothers as the suppliers of the heroin which Giampaoli and Santagata had delivered on April 20 and May 19 was of course damaging to appellant, but it was nonetheless admissible as the declaration of a co-conspirator in furtherance of the conspiracy. *Lutwak* v. *United States*, 334 U. S. 604, 618-19; *Schine*

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Theatres v. *United States*, 334 U. S. 110, 116-17; *Glasser* v. *United States*, 315 U. S. 60, 74-5; *Logan* v. *United States*, 144 U. S. 263, 308-9. It was also admissible in support of the substantive charge on the same theory, as an admission by an agent in the course of the performance of his agency. *Delli Paoli* v. *United States*, 352 U. S. 232; *Lutwak* v. *United States*, *supra*, at 617-18; *Krulewitch* v. *United States*, 336 U. S. 440, 442-3; *Wolcher* v. *United States*, 9 Cir., 233 F. 2d 748, 750; 4 Wigmore, Evidence §1079. For all the sales were made pursuant to the single, comprehensive arrangement. Zirilli had made complaints about the quality of the heroin and Santagata was anxious to retain such a good customer as Zirilli for the benefit of himself and his co-conspirators; and this explanation might well lead Zirilli to believe that they were all doing the best they could under trying circumstances. We find no error here.

In May, June and July the government agents sought to make direct contact with appellant, but this was not possible until Santagata was induced to go to Mexico with Zirilli for the ostensible purpose of starting a new venture of importing large quantities of narcotics from some people who were supposed to have a vast supply on hand ready for export. Zirilli and Santagata left for Mexico on July 14, 1955. In anticipation of the trip Zirilli introduced Narcotics Agent Joseph Tremoglie as his brother-in-law, to take care of his narcotics business and his customers while he was away in Mexico with Santagata, and Zirilli insisted that Tremoglie be taken to meet the Campisis in Newark as in no other way would Zirilli be given assurance that all would go well in his absence. Accordingly, the

events of June 28, 29 and 30 relate to the purchase of another quarter kilogram of heroin for which Tremoglie paid $2500. Tremoglie went with Santagata to Newark on June 29, and he came back with the heroin; but he did not meet appellant as Santagata left Tremoglie in the car and in a short time delivered the narcotics. Zirilli was annoyed at this contretemps, Santagata had outsmarted him; but on July 19, 1955, Montana drove Tremoglie and Giampaoli out to Newark, and, as Tremoglie on this occasion positively refused to pay the money without being taken to the "source of supply," they parked the car, went up to appellant's home at 558 North 6th Street, Newark, where appellant was sitting on the stoop. They all went upstairs, Tremoglie paid the money and appellant took a package of heroin "out from under the seat cushion of the upholstered chair" and delivered it to Tremoglie. Prior to the delivery of the heroin Tremoglie had a conversation with appellant over the quality of the last purchase, with obvious reference to the transaction on June 29 when Tremoglie went to Newark with Santagata but was tricked into paying the money and accepting the heroin without meeting appellant. The conversation was: Tremoglie: "Is this stuff as good as the stuff I bought last time (June 29) when I came up with the old man with the gray hair (Santagata)?" Appellant replied, "Yes, the same thing. I had a piece and I broke it in four and this is one of the other four pieces." Appellant also volunteered some practical hints to be followed in the distribution of the merchandise at retail.

It is idle to suggest that appellant was no more than a seller and Giampaoli and Santagata isolated purchasers

acting for their own account and in no privity with appellant. The evidence discloses a narcotic ring operating on a large scale and with a highly organized system of avoiding detection. It is and has long been common practice to try conspiracy and substantive counts together in these narcotics cases and others, and we find the evidence sufficient to support the submission of both to the jury.

Nor does it matter that appellant was in Newark, and that there is no evidence that he was ever in the Eastern District of New York. Many of the overt acts scheduled in the conspiracy count of the indictment took place in the Eastern District, many of the sales were negotiated and the deliveries actually made in the Eastern District. This is sufficient. *Ford* v. *United States*, 273 U. S. 593, 619-20; *Hyde* v. *United States*, 225 U. S. 347; *Brown* v. *Elliott*, 225 U. S. 392; *Krogmann* v. *United States*, 6 Cir., 225 F. 2d 220, 227; *United States* v. *Cohen*, 3 Cir., 197 F. 2d 26; *Ladner* v. *United States*, 5 Cir., 168 F. 2d 771; *Davis* v. *United States*, 5 Cir., 148 F. 2d 203.

While the trial judge instructed the jury that no verdict of guilty on the conspiracy count could be arrived at unless the jury found "that at least one of the overt acts took place," appellant now urges as a ground for reversal that the instructions did not specifically require a finding that an overt act took place in the Eastern District of New York. But the proof of a number of overt acts in the Eastern District, some in Queens and at least one in Brooklyn, was uncontroverted and of the most substantial character. The omission was at most an inadvertence. Had appellant requested such an instruction, or excepted on that ground

to the charge as given, we have no doubt the trial judge would have supplied the omission and the verdict would have been the same. But no exception was taken, no such request was submitted and appellant's counsel indicated no criticism whatever of any part of the charge. To reverse on such a point as this would be a travesty of justice. *United States* v. *Trenton Potteries*, 273 U. S. 392, 403-4.

Nor do we find error in the inclusion in the conspiracy count as an overt act, and the receiving of evidence of the transaction of July 19, 1955, despite the fact that appellant had already been tried and convicted of that offense in Newark and received a suspended sentence. The crime of conspiracy is a separate and distinct offense. *Harvey* v. *United States*, 2 Cir., 23 F. 2d 561, 564; *United States* v. *Shapiro*, 2 Cir., 103 F. 2d 775, 777. There is no double jeopardy; and the evidence was properly received.

Most of the other points require no discussion, we think; but appellant vigorously argues for reversal because the trial judge, over objection, received certain testimony by the West Orange, New Jersey police officers who arrested appellant at his new residence 265 14th Avenue in Newark on January 22, 1956. Armed with a warrant which authorized search of the Campisi residence for a suspect "in a robbery we had in our town" one of the police officers found appellant hiding under a bed. Although the warrant did not mention appellant he was taken into custody but he broke away from the arresting officer and, after some running around the house, dashed through an open window to the roof of the garage and jumped off the roof. But another police officer had been stationed in the rear of the

premises and appellant was again taken into custody as he was trying to climb over a fence.

It is not seriously disputed that this evidence of attempted escape is admissible as proof of a consciousness of guilt. The fact that this particular warrant did not call for the arrest of appellant is of course of no consequence. A warrant for the arrest of appellant, issued in the Eastern District on August 2, 1955, was outstanding, and it is of no moment that he was found by accident. What appellant complains of is that it came out that appellant's son Peter was the person the police officers were after, and that he was also arrested. Even more prejudicial, according to appellant's contention, is the receipt, over objection, of proof that in the room where appellant, clothed only in "an underwear top, a pair of slacks and a pair of shoes," was found under the bed, the police officers found a suit of clothes in one of the pockets of which was a small cardboard box containing a syringe, a hypodermic needle, a small silver spoon with a curved handle and a packet of white powder. When questioned by the police officers appellant denied that the suit was his or that he knew anything about the contents of the box.

The reference to Peter was too incidental to be of consequence against the background of the trial record as a whole. Moreover, the prosecutor with commendable fairness earnestly requested the jury "not to take into consideration the fact that Thomas Campisi's son was wanted by the police in New Jersey." The incident is too trivial to warrant reversal.

Exhibit A

As to the articles found in the box, it suffices to say that they were not only found in appellant's private home but in the very room where he was hiding under the bed when apprehended. Under the circumstances it was permissible for the jury to infer that these articles were in appellant's possession, in the absence of any proof to the contrary. Cf. *People* v. *Birnbaum*, 208 App. Div. 476, 203 N. Y. Supp. 697. But appellant did not come forward with any such proof; indeed, the defense rested at the close of the prosecution's case, and appellant requested an instruction, which the trial judge gave, to the effect that no unfavorable inference be drawn from the fact that he did not testify in his own defense. We find no error in any of the rulings made at the trial.

Affirmed.

EXHIBIT B

Date	Indictment	Charge	Court	Disposition	* Duplication in Conspiracy Count
4/18/55	Ct. 2— Giampaoli	Gave 14½ grains heroin to Agt. Zirilli.	EDNY	G.—Dismissed	Overt act #1 (Same as substantive count).
4/20/55	Ct. 3— Chas. Campisi Thos. " Ugo Giampaoli Aniello Santagata	Sale 8 ozs. heroin to Agt. Zirilli.	EDNY	Santagata—4 yrs. Dismissed as to G. Thos. Campisi convicted— 3 yrs. sentence.	Overt act #2 and #3 (Same 4 defts. Met in Newark 4/20/55—Sale same heroin)
5/19/55	Ct. 4— Ugo Giampaoli Aniello Santagata	Sale 8 ozs. heroin to Agt. Zirilli.	EDNY	Santagata—4 yrs.	Overt act #4—concealment same 8 oz. heroin. Overt act #5—Sale same heroin.
6/29/55	Ct. 1— Aniello Santagata Ct. 2— Ugo Giampaoli & Aniello Santagata	Ct. 1—Sold 8 ozs. illegally imported heroin. Ct. 2—Sale same drugs—No order form.	USDC, Newark.	Disposition unknown.	Overt act #6—SDNY., Conv. re: this sale. Overt act #7—sale—same heroin. Overt act #8—meeting re: sale Overt act #9—sale—same heroin.
7/19/55	Ct. 3— Gasperi (Thomas) Campisi Ct. 4— Gasperi (Thomas) Campisi Ugo Giampaoli	Ct. 3—sale 8 ozs. illegally imported heroin. Ct. 4—Sale same heroin—No order form.	USDC, Newark.	Thos. Campisi—5 yrs.—SS. Giampaoli—4 yrs. Santagata—4 yrs.	Overt act #10—Concealment 8 ozs. heroin in Newark. Overt act #11 (Sale same heroin).

* Count 1—EDNY—Conspiracy to violate narcotic laws among Charles Campisi, Thomas Campisi, Frank Giampaoli, Ugo Giampaoli and Aniello Santagata from Jan. 1, 1955, to August 3, 1955.

EXHIBIT C

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Criminal Number 266—55

UNITED STATES OF AMERICA

—vs.—

GASPERA CAMPISI,
UGO GIAMPAOLI, and
ANIELLO SANTAGATA

The Grand Jury in and for the District of New Jersey, sitting at Newark, charges:

COUNT I

That on or about June 29, 1955, at Newark, in the District of New Jersey,

ANIELLO SANTAGATA

fraudulently, knowingly, and unlawfully sold a narcotic drug, to wit, eight ounces of heroin hydrochloride, after the same had been fraudulently, knowingly, and unlawfully imported and brought into the United States contrary to law, and the said ANIELLO SANTAGATA then and there well knew the said narcotic drug to have been so fraudulently and unlawfully imported and brought into the United States contrary to law.

Title 21, U. S. C., Section 174

Exhibit C

COUNT II

That on or about June 29, 1955, at Newark, in the District of New Jersey,

UGO GIAMPAOLI and
ANIELLO SANTAGATA

knowingly, willfully, and unlawfully sold a narcotic drug, to wit, eight ounces of heroin hydrochloride, said sale not being made in pursuance of a written order of the person to whom such narcotic drug was sold on a form issued in blank for that purpose by the Secretary of the Treasury of the United States or his delegate, as required by Section 4705(a) of the Internal Revenue Code of 1954.

Section 4705(a), Internal Revenue Code, 1954
26 USCR Sec. 4705(a)

COUNT III

That on or about July 19, 1955, at Newark, in the District of New Jersey,

GASPERO CAMPISI

fraudulently, knowingly, and unlawfully sold a narcotic drug, to wit, eight ounces of heroin hydrochloride, after the same had been fraudulently, knowingly, and unlawfully imported and brought into the United States contrary to law, and the said GASPERO CAMPISI then and there well knew the said narcotic drug to have been so fraudulently and unlawfully imported and brought into the United States contrary to law.

Title 21, U. S. C., Section 174—1955

Exhibit C

COUNT IV

That on or about July 19, 1955, at Newark, in the District of New Jersey,

GASPERO CAMPISI and
UGO GIAMPAOLI

knowingly, willfully, and unlawfully sold a narcotic drug, to wit, eight ounces of heroin hydrochloride, said sale not being made in pursuance of a written order of the person to whom such narcotic drug was sold on a form issued in blank for that purpose by the Secretary of the Treasury of the United States or his delegate, as required by Section 4705(a) of the Internal Revenue Code of 1954.

Section 4705(a), Internal Revenue Code, 1954.

EXHIBIT D

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Criminal 266–55

Re: U. S. A. v. THOMAS CAMPISI

(Trial February 21-24, 1956)

ELMER PALARDY, a witness for the Government, testified:

Q. Sergeant, by whom are you employed, sir? A. The Police Department, West Orange, New Jersey.

Q. How long have you been employed there? A. Eighteen years.

Q. Sergeant Palardy, do you recognize the defendant, Thomas Campisi? A. I do, sir.

Q. Will you tell us when and where you first saw him? A. On January 22, 1956 at his home at 265—14th Avenue, Newark, N. J.

Q. And where was he when you first saw him? A. He was under the bed.

Q. What happened then? A. We were searching, making a thorough search of the house, looking for his son, and evidence in a burglary.

Q. Don't go into that. I don't want to get any evidence in this case that might be prejudicial against the defendant so I caution you to only testify as to your contact with the defendant, Thomas Campisi. A. I found Mr. Campisi under the bed. I asked him what he was doing under the bed and he said he was painting the ceiling. His actions were over-suspicious and we kept him under ob-

servation, kept him in the house while we were waiting for his son to come home.

Q. What happened while you were there? A. While we were there a couple of his brothers came in the house. Mrs. Campisi was there, and his daughter and a younger brother came home. Later on about 5 p.m. his son Pete came home. We decided to take Mr. Campisi to police headquarters in Newark, N. J.

Q. What happened then? A. On the way down, as we started down the stairs with our prisoner, three other detectives from West Orange, myself, and Detective Lane of the Newark police, Mr. Campisi bolted through a back door and Detective Lane shouted telling me that, alerting me that Mr. Campisi had skipped.

Being thoroughly familiar with the house, previously making a search, I dashed back, but the man had started downstairs so I went out the front stairs again and I alerted two of our detectives downstairs, Sergeant Banford and Detective O'Rourke. Detective Banford and I ran around the rear of the building. The door was locked. We kicked the door in, ran upstairs, and in the meantime Mr. Campisi ran back upstairs through the kitchen, jumped out the kitchen window and ran across a roof, jumped off the roof and started through some back yards. I ran downstairs, out the front door, up the street to the corner. I didn't see Mr. Campisi at first and previously Mr. Campisi, as I said, had jumped from the roof. On the way back I apprehended him and captured him, climbing a fence, at the point of a gun.

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No. 532

In the Supreme Court of the United States

OCTOBER TERM, 1957

THOMAS CAMPISI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
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UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. Ex. A 21–33; R. 79–89) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on September 9, 1957 (R. 90). The petition for a writ of certiorari was filed on October 7, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the failure of the judge to charge on the necessity of finding agreement or an overt act in the district of trial on a conspiracy count requires reversal of the conviction where there was no objec-

tion to the charge and ample evidence of numerous overt acts within the district of trial.

2. Whether petitioner was in double jeopardy because the conspiracy count charged as one of many overt acts a substantive offense of which he had previously been convicted.

3. Whether the admission of testimony that other members of petitioner's family were involved in criminal acts constituted prejudicial error under the circumstances of this case.

4. Whether there was sufficient evidence to support the conviction.

STATEMENT

In the United States District Court for the Eastern District of New York, petitioner was convicted of conspiracy and a substantive narcotic violation (R. 9–12, 75).[1] He was sentenced to consecutive terms of imprisonment of five years and a fine of $1,000, and three years and $1,000 (R. 75–76). On appeal, the judgment of conviction was affirmed (R. 90).

The evidence adduced at the trial may be summarized as follows:

Posing as a large narcotics operator, federal narcotics agent Zirilli, through a special employee, met co-conspirator Giampaoli, who worked in a restaurant in Long Island and lived in Queens County in the Eastern District of New York. In April 1955, he discussed with Giampaoli the possibilities of a sub-

[1] Petitioner was charged with co-conspirators Charles Campisi (his brother), Giampaoli, and Santagata. The latter two pleaded guilty.

stantial purchase of heroin (Tr. 3–6, 65–66)[2] but said he first wanted a sample (Tr. 8). Giampaoli delivered a sample of heroin the following day at the restaurant (Tr. 8–10). The next day, Zirilli went to Giampaoli's home. He discussed with him the inferiority of the sample, and also the price for a quarter kilogram of heroin. Giampaoli made a telephone call, and then told Zirilli that a quarter of a kilogram would cost $2,300, $2,000 of which would go to Giampaoli's "man" (Tr. 10–12).

On April 20, 1955, as charged in the substantive count of the indictment, this sale was made (Tr. 13). On that date, at Giampaoli's home, Giampaoli asked Zirilli to pay for the narcotics and said "that his source of supply was waiting for him." Zirilli paid the money (Tr. 14). They arranged to meet at the racetrack. There Giampaoli told Zirilli to come to his house for the heroin that evening (Tr. 15–16). Giampaoli left the racetrack and together with coconspirator Santagata drove to Kearny, New Jersey, where they met Charles Campisi and petitioner in their car. Petitioner entered Santagata's car and talked with the occupants and then returned to his own car. After some aimless driving by both cars, petitioner returned to Santagata's car and they drove to a building. Petitioner, Santagata, and Giampaoli entered the building. When they left the building, Giampaoli and Santagata returned to Giampaoli's home (Tr. 145–149), where Giampaoli gave a package

[2] The designation "Tr." refers to the typewritten transcript of the trial proceedings. It is being lodged with the Clerk of this Court.

to Zirilli (Tr. 17–18, 74–75). Upon analysis, the package was found to contain heroin (Tr. 18, 232).

On May 16, 1955, Zirilli indicated that he was ready to purchase more heroin. He met Giampaoli at his home on May 18, and told him that he was ready to purchase another quarter kilogram of heroin (Tr. 19). Giampaoli made a telephone call and arranged with Zirilli to deliver the narcotics to him at the restaurant later that day (Tr. 19–20). Accordingly, they met at Giampaoli's restaurant where Giampaoli, after a phone call, told Zirilli that his source of supply could not deliver the heroin until the next day (Tr. 20). The next day at the restaurant Giampaoli told Zirilli "there was no need for him to go to Newark since his man was going to have the heroin with him" (Tr. 20–21). At Giampaoli's instructions, the special employee drove Zirilli and Giampaoli to a store in Brooklyn. In the store, Zirilli met co-conspirator Santagata for the first time. They went to a nearby parking lot where Santagata took a package from his car and gave it to Zirilli (Tr. 21–22). Upon analysis, the package was found to contain heroin (Tr. 84–85; 231).

On May 25, 1955, Santagata told Zirilli that the Campisis in Newark were supplying the heroin for him and Giampaoli (Tr. 24–25).

In July 1955, Zirilli and Santagata left for Mexico for the ostensible purpose of obtaining heroin to smuggle into the United States (Tr. 26, 32, 95). Before Zirilli left, he introduced federal narcotics agent Tremoglie as his brother-in-law and as the one who was to take care of his narcotics business while he was

in Mexico (Tr. 27, 93, 95). Zirilli insisted that Tremoglie should be introduced to the Campisis to assure him that his business would be taken care of properly in his absence (Tr. 27–28, 65), and Giampaoli agreed (Tr. 67). On June 29, Tremoglie went with Santagata to Newark to get heroin. Santagata, however, took the money from Tremoglie and left Tremoglie in the car. He returned shortly with the heroin (Tr. 28–29, 30–31, 87, 96–101, 232).

Zirilli insisted that Tremoglie had to be introduced to the source of supply before he left for Mexico. Santagata demurred but later said that he would take Tremoglie "to the Campisis in Newark" (Tr. 31–32, 102). On July 19, Tremoglie and Giampaoli drove to petitioner's home. There petitioner took a package from under a seat cushion of a chair and gave it to Tremoglie. On this occasion, Tremoglie asked petitioner if "this stuff [is] as good as the stuff I bought last time" (June 29) when he came with Santagata. Petitioner replied "Yes, the same thing. I had a piece and I broke it in four and this is one of the other four pieces." He also gave Tremoglie some advice on retailing heroin (Tr. 104–107). He requested that Giampaoli and Tremoglie leave his home separately because "It looks funny for two guys to walk out of the house", and told Tremoglie to put the package in his pocket (Tr. 107). Upon analysis, the package was found to contain heroin (Tr. 108, 232).

A warrant for petitioner's arrest was issued in the Eastern District of New York in August 1955, but the federal officials were unable to execute it (Tr. 138, 139, 140). Petitioner was arrested in January 1956,

in his Newark residence by the local police. At that time, the local police were looking for petitioner's son, Peter, in connection with a local robbery. In executing a search warrant for the premises, they found petitioner hiding under a bed. In that room, they found a suit of clothes, which contained narcotics paraphernalia. Because petitioner was acting suspiciously, the police officers kept him under observation while they were waiting for Peter to come home. During that time, petitioner attempted unsuccessfully to escape from the officers by jumping through an open window to the roof of the garage (Tr. 204–210, 212–218).

ARGUMENT

1. In its charge to the jury on the conspiracy count, the court stated that petitioner and his co-conspirators were charged "within the Eastern District of New York" with conspiring to violate the federal narcotic laws. It defined conspiracy as an agreement between two or more persons and read the 11 overt acts charged in the indictment as having been committed by petitioner and his co-conspirators. Of the 11 acts, five were alleged to have been committed in the Eastern District of New York. Petitioner was named in one (R. 65–69). The court also told the jury that in order to find petitioner guilty it must find the existence of such agreement, that petitioner participated in it, and that at least one of the overt acts in furtherance of the conspiracy was committed. Petitioner, who made no request as to any further instruction on venue, now complains (Pet. 6–9) of the court's failure to go further and instruct precisely that the jury must

find that one of the overt acts or the formation of the conspiracy took place in the Eastern District of New York.

No issue with respect to venue was raised at the trial. There was ample evidence that overt acts in furtherance of the conspiracy occurred in the Eastern District of New York. Indeed, the second overt act alleged was the sale on April 20, 1955, in the Eastern District, which formed the basis of the substantive count on which petitioner was convicted. The court below, therefore, properly held that petitioner's failure to object at the trial precluded the raising of the issue on appeal. Rule 30, F. R. Crim. P.; *United States* v. *Trenton Potteries*, 273 U. S. 392, 402–404.

2. Prior to his conviction on the indictment in this case, petitioner was convicted in the United States District Court for New Jersey of narcotics violations in connection with the sale to Tremoglie on July 19, 1955 (Pet. Exs. B and C, 34, 36–37). This sale and the concealment of the narcotics sold were also charged as overt acts 10 and 11 in this case. Petitioner claims (Pet. 9–10) double jeopardy as a result of the two convictions. But it is well established that the substantative crime and conspiracy are separate offenses punishable by separate sentences. *Pereira* v. *United States*, 347 U. S. 1, 11; *Pinkerton* v. *United States*, 328 U. S. 640, 643–644; *United States* v. *Crowe*, 188 F. 2d 209 (C. A. 7); *Colosacco* v. *United States*, 196 F. 2d 165, 168 (C. A. 10).

3. Petitioner contends (Pet. 10–15) that, over his objection, prejudicial irrelevant testimony was introduced at the trial.

a. Testimony was introduced that the local police visit to the Campisis was in connection with the implication of petitioner's son Peter in a local robbery (Pet. 13; R. 59; Tr. 208, 219). The jury at that point was immediately told by the court to disregard that statement (R. 59; Tr. 208, 219). In addition, the court in its final charge told the jury (R. 64) "Disregard all evidence which the court ordered stricken out." Government counsel also requested the jury to disregard testimony regarding Peter's arrest (R. 73–74). It is presumed that the jury followed the court's instructions. *Delli Paoli* v. *United States,* 352 U. S. 232, 242; *Opper* v. *United States,* 348 U. S. 84, 95.

b. During Agent Zirilli's testimony in answer to a question by the prosecutor whether he had a conversation with Santagata about a man named "Compy", Zirilli replied (Tr. 25):

> During this conversation with Santagata I told him that I had read in the newspaper about a man named Compy who had been murdered in Newark. He said that he knew the man. He knew the whole family, that in fact the name of the man was Campisi and that they were the people we were doing business with in Newark.
>
> * * * * *
>
> Santagata continued to say that he could not get pure heroin from these people because they were four brothers and they had many mouths to feed and he said we can't blame them for adulterating the heroin because there are so

many mouths to feed and so much money to be paid out.

The identification of the source of supply by one conspirator to his customer during the life of the conspiracy was admissible evidence. The incidental reference to petitioner's brother was part of the whole conversation.

c. Testimony as to petitioner's attempted escape (see the Statement, *supra*, p. 6) was, under the authorities cited by petitioner himself, admissible as tending to show guilt (Pet. 13–14). See also *Allen* v. *United States*, 164 U. S. 492, 499; *Shelton* v. *United States*, 169 F. 2d 665, 668 (C. A. D. C.), certiorari denied, 335 U. S. 834.

d. In the room where petitioner was found under the bed during the search pursuant to a warrant by New Jersey police, the officers also found narcotics paraphernalia in a suit. When questioned, petitioner denied that the suit and the paraphernalia belonged to him. However, since petitioner was found in the same room in a state of partial undress, the jury had the right to infer that the paraphernalia did belong to him, and to consider this for what it was worth as evidence of petitioner's implication in narcotics transactions.

4. Petitioner's attack on the sufficiency of the evidence on both counts is refuted by the record. See the Statement, *supra*. The evidence was fully reviewed by the court below (Pet. 23–30), and found sufficient on both counts.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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NOVEMBER 1957.